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ABSTRACT

This report provides information about the state of Aboriginal corrections in Canada. It draws on survey results, analyses of quantitative data, and a review of the relevant literature and research and raises some complex questions about the meaning and future of Aboriginal corrections. There are nine parts that: (1) discuss the reliance on imprisonment in Canada compared to other countries, and the use of imprisonment as a reflection of cultural attitudes; (2) point out that a minority of prisoners are committers of violent offenses, and that prisoners are disproportionately from the most disadvantaged groups in society; (3) discuss demographics of Aboriginal offenders; (4) discuss the three factors of marginalization, alienation, and dysfunctional family life that lead to Aboriginal overrepresentation among prisoners; (5) explore what works in correctional programming, the history of Aboriginal programming, and critical questions about cultural programming; (6) report correctional personnel and inmate survey results indicating agreement on need for more educational and vocational programs, use of Aboriginal program people, and lack of community support programs for parolees; (7) discuss the need for positive change in the communities to which offenders return; (8) point out the need to educate the public about reducing the reliance on imprisonment and about using other methods to respond to offenders; and (9) present seven steps to reduce the overrepresentation of Aboriginal people in correctional institutions. Appendices present methodology, data tables, and survey questionnaires. Contains 174 references. (TD)

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EXAMINING ABORIGINAL CORRECTIONS IN CANADA

by

Carol LaPrairie, Ph.D.

assisted by

Phil Mun
Bruno Steinke

In consultation with

Ed Buller
Sharon McCue

Aboriginal Corrections

Ministry of the Solicitor General

1996

EXECUTIVE SUMMARY

This document provides information gathered though surveys, analyses of quantitative data and a review of current literature and research about the state of aboriginal corrections. Its purpose is to inform program and policy makers, aboriginal organizations and services, academics, and others interested in the field. It is also intended to be used in the development of research and program evaluation plans, and to provide new directions to be considered for aboriginal corrections, theoretical issues and responses to aboriginal offenders. It raises some complex questions about the meaning and future of aboriginal corrections.

The report is in nine parts. While there is a natural progression from one part to the next, each can be read alone as the subject matter is discrete and specific. Because of the quantity of data in some parts, summaries are presented at the end of each. Relevant tables are provided at the end of parts. Listings of "lessons learned" and suggested future research directions are also provided. In addition, there is an extensive reference section on mainstream and aboriginal correctional literature. A description of provincial data sources, provincial tables, and the correctional personnel, community and inmate survey questionnaires are included in the Appendix.

A summary of each of the nine parts of the report follows.

Part I: Use of Imprisonment

The reliance on imprisonment in Canada compared to other countries is the fundamental issue discussed in Part I. The variables which influence the use of imprisonment are both criminal justice, i.e., application of laws and actions of criminal justice agents, and societal, i.e., the lack of a relationship between crime rates and levels of imprisonment suggests other socio-cultural factors are at play. The majority of sentences in Canada are short (less than six months). Crime (both reported and victimization) increases from east to west and there is some variation in use of imprisonment. There are no major differences in the type of offences committed across the country. Some provinces may be dealing with more difficult populations (i.e., in socio-economic and offence terms) than are others, but without better data on prior records and offender profiles, firm conclusions about the factors leading to disparity are not possible.

For some offences, particularly fine defaults, B.C., Quebec and Ontario appear to rely less on imprisonment than other provinces. The Prairie provinces have the most marginalized[1] aboriginal populations and consistent use of imprisonment for life-style related offences such as administration of justice, public order and fine defaults, results in part, in high levels of imprisonment. The use of imprisonment also reflects cultural attitudes and penal values which

[1] In the body of this report the word 'marginalized' is used frequently. It refers primarily to the historical processes to which aboriginal people were subjected and the contemporary socio-economic condition this has created. It may also refer to those individuals who have been socially and economically disadvantaged within a community setting.

may help to explain variation across the country. However, more punitive public views on the need for imprisonment or on aboriginal issues, are not necessarily found to translate into a greater reliance on imprisonment or higher aboriginal incarceration levels.

Part II: Who Goes to Prison?

People sentenced to terms of imprisonment are not always there for the commission of serious crimes against the person. Prisons are also used as "catch-basins" for social problems, for chronic offenders who commit relatively minor offences, for those who the public deems most in need of punishment (for example, drug offenders), and for property offenders. In fact, those who commit serious violent offences are generally in the minority in a prison population. What is perhaps most notable about who goes to prison is the disproportionality of certain socially and economically marginalized racial groups such as blacks and aboriginal people (who appear to commit more offences for which imprisonment is used), and, more generally, of the most disadvantaged groups in society.

Two factors are central to understanding the over-representation of aboriginal people in Canadian correctional institutions. The first is the over-reliance in Canada on the use of imprisonment; the second is that more of the aboriginal than the non-aboriginal population falls into the socio-economic group most vulnerable to involvement in the criminal justice system.

Part III: Aboriginal Offenders, Offending and Imprisonment

Some characteristics aboriginal offenders share with non-aboriginal offenders and some differ. The attitudes, peer group support, and personality factors that promote the commission of crime are similar and are shaped by family background, poverty, school experiences, exposure to violence, and isolation from opportunities, options and other factors that influence the adoption of pro-social attitudes. Culture, geography and exposure to mainstream society distinguish aboriginal offenders both from non-aboriginal offenders and among themselves.

Aboriginal offenders are disproportionately represented in most provincial, territorial, and federal institutional populations. The disproportionality is greatest in the three Prairie provinces and least in the Maritimes and Quebec. However, aboriginal people are also disproportionately represented in admissions for violent offences, particularly in federal institutions, for which they are also receiving shorter sentences than the non-aboriginal groups. At the same time, use of incarceration is greater for aboriginal offenders when controlling for type of offence (but without information on prior record). Aboriginal offenders are generally younger, have more prior contact with the criminal justice and correctional systems, and come from more dysfunctional backgrounds than the non-aboriginal groups. Aboriginal over-representation in correctional institutions can probably be explained by a higher rate of offending, the commission of more offences that typically result in imprisonment, and the fact that existing policies and practices that affect

sentencing and operate in provinces with the most disadvantaged aboriginal groups, will have the most onerous effects on those groups. Less use of probation in provinces such as Alberta and Saskatchewan, may contribute to the over-representation problem.

Part IV: Explaining Aboriginal Over-Representation

What has created such a vulnerability of aboriginal people to involvement in the criminal justice and correctional systems in Canada?

The argument put forward here is that one of the most important factors is a decline in interdependency among people in aboriginal communities which has come about as the result of historical processes (such as colonization and the creation of the reserve system) which have reproduced mainstream social structure without accompanying institutional development. This has been exacerbated by cultural dislocation and the decline of informal mechanisms of social control. The end result is socially stratified communities where limited resources and resource distribution create large groups of disadvantaged people, a growing youth sub-culture with few legitimate outlets or opportunities, decontextualized exposure to the mass media, and the lack of cultural and social resources to assist in identity formation which support pro-social values. It is, however, misleading and incorrect to assume that all aboriginal communities in Canada are exposed to the same contingencies and limitations as a result of these historical and contemporary processes. Clearly not the case, such an assumption inhibits the degree of attention required by those individuals and communities most in need. The degree and impact of change has been mediated by settlement patterns, geographic location, cultural factors, and individual community experience. The most affected communities are in the Prairie provinces which also have the highest aboriginal incarceration.

Three factors are most conducive to a crime problem. The first is the large group of marginalized in communities because of the uneven distribution of resources; the second is that reserves are not generally integrated into mainstream Canadian society (because of historical practices of exclusion and the second class status ascribed to aboriginal people) and the resulting alienation is most prominent in those with the fewest connections to mainstream society; and the third is that exposure to dysfunctional family life and childhood abuse (in addition to other factors conducive to criminal behaviour) have profoundly negative effects on individual development. The most marginalized groups in communities are most affected by these factors. When these groups leave reserves they have few tools for survival or for gaining status or integration into mainstream society. In the urban setting, the lack of education and employment skills, coupled with substance abuse problems and histories of family violence and dysfunction, lead to negative peer associations and the adoption of anti-social and pro-criminal attitudes. There is a growing problem of marginalized people leaving reserves to live in urban areas.

Part V: Programming for Aboriginal Inmates

Part V explores mainstream and aboriginal correctional programming. The "what works" literature is presented and shows that for the general inmate population there are a number of principles to be followed in effective programming. These include: proper administration and implementation of programs, a sound conceptual model of criminality, recognition of individual differences, targeting criminogenic needs, and the style and mode of treatment must correspond to the learning characteristics of offenders. Needs of incarcerated females have not been adequately reflected in institutional programming, particularly in provincial and territorial institutions.

The history of aboriginal programming is traced. The CSC approach can best be described as cultural/spiritual in nature, with an added emphasis on facilitating the release of aboriginal offenders and connecting them to communities. Underscoring the approach is the belief that unique solutions are required to reflect the unique cultural backgrounds of aboriginal inmates, and that loss or lack of cultural roots and identity are the primary causes of involvement in the criminal justice system. Most provinces and territories have followed the same path in developing and implementing programs for aboriginal inmates in their correctional institutions. The emphasis on the cultural and spiritual has emphasized the group rather than the individual approach.

The extent to which the existing aboriginal-specific programs accommodate findings about program effectiveness for the general offender population, is an empirical question for which no clear answer exists. There is also a lack of information about the value of mainstream programs for aboriginal offenders. Evaluations of the impact of cultural specific and/or mainstream programming on institution and release activities of aboriginal offenders are required and should explore the length and type of cultural and/or other programming to which the offender is exposed and evaluate the following accordingly: whether objectives of each program have been met; offender interest and involvement in programs; offender's institutional behaviour with participation in programs; linking of cultural programs with other institutional programs such as education and employment; re-offending over various time periods; potential for inmate to continue programs when released (i.e., the availability of external programs); the offender's ability to integrate into family and community; community support and recognition of cultural/spiritual change in offender; community support for content of cultural/spiritual programming; and offender participation in programs such as employment, education, recreation etc..

Some critical questions about cultural programming should also be asked and answered. These include among others, how decisions about cultural appropriateness and legitimacy of cultural providers are made, the existence of a cultural denominator acceptable to all aboriginal offenders, and the acceptance of cultural teaching to communities and families to which offenders return.

Part VI: Correctional Personnel and Inmate Survey Results

Findings from the analysis of correctional personnel and inmate surveys include similarities and differences in perceptions of programs, needs and other issues related to aboriginal offenders, as well as differences among aboriginal inmates themselves as reported by them. Most importantly, there are differences which are critical to understand and to explore further if the range of needs of aboriginal inmates is to be better met.

Three-quarters of the male, aboriginal, inmate survey respondents were Status Indian, from, but not necessarily having spent most of their lives on reserves, with limited education and previous incarcerations. Provincial offenders were younger and have more previous incarcerations than federal offenders. Federal offenders had more access to programs than provincial offenders and participated more, particularly in cultural/spiritual programs. Generally, inmates did not feel excluded from or shy about attending non-aboriginal programs. Cultural/spiritual needs were identified by more federal inmates, who also had greatest exposure to these programs. However, employment and education were generally considered the greatest needs, and alcohol the greatest problem.

Most inmates felt any program that helped them was of value, and that both aboriginal and non-aboriginal offenders could benefit from each other's programs. Unfortunately, there were not enough programs in institutions, particularly provincial ones. They believed they had the same education and employment needs as non-aboriginal inmates but different family situations and culture. Offenders do not participate heavily in programs in areas where they claim to have the greatest need (i.e. employment and education) or in counselling. Generally, offenders did not feel there were enough community programs to meet their needs upon release.

Inmates who have spent most of their lives on reserves are less well educated, see education and reading as more important, are more reluctant to participate in general programs because of shyness and feeling left out, do not participate as much in group counselling, and feel more accepted by family and community. Inmates from combination and non-aboriginal communities tend to identify culture and spirituality more often as needs, and have been incarcerated more often. Older inmates and those who have been incarcerated several times are more negative about staff, programming, acceptance by family and community, release etc., and have more alcohol problems, especially if provincial offenders. More young inmates and those with 3+ incarcerations spent their first period of detention in a youth facility. More young inmates considered education and reading their greatest needs and regard staff more positively. Younger federal offenders believed there were enough aboriginal-specific programs. Those with less education were more unlikely to complete release programs, believed education and employment were their greatest needs, did not think their needs had been adequately identified, and were less likely to participate in individual counselling programs.

Unlike the dissonance in the minds of correctional personnel about problems and solutions for aboriginal offenders, they see more consistency between the problems and solutions for non-aboriginal offenders. This is true whether exploring needs while in institutions, or programs which reduce re-offending. One explanation for the difference is that cultural programming for

aboriginal offenders has become so entrenched that it is the most immediate response, and little else is considered.

There are differences between correctional personnel and inmate perceptions about levels of release, security classification, adequacy of assessments, family support and family problems, and aboriginal participation in non-aboriginal programming. Nevertheless, there was agreement on need for more programs inside and outside institutions, use of aboriginal program people, limited qualifications of staff, and lack of community support.

Part VII: The Four R's - Risk, Release, Recidivism and Reintegration

Parole release data reveal that federal aboriginal offenders are less likely than non-aboriginal offenders to receive full parole (but are more likely to receive temporary absences) but that seriousness of offences appears to explain the differential full parole release rates. Aboriginal offenders also have higher recidivism levels. Because of prior offences and seriousness of offences, aboriginal offenders are considered a higher risk for re-offending which, in turn, influences parole decision-making. This is exacerbated by a difficulty in formulating release plans, and, as the survey data reveal, in receiving support from communities.

The latter finding is contrary to popular belief but underscores the suggestion that reintegration of the offender into the community where the community provides support and assistance should be a major focus of correctional policy. The positive effects of institutional programs are wasted if follow-up programs are not available in the community. It is essential that offenders return to positive environments, whether or not these are home communities. For some offenders, a return to the home communities may be a recipe for reoffending. This suggests that needs of communities must be realized before they can accommodate needs of offenders and become environments which promote pro-social values.

There are, however, important differences among the aboriginal group. While the risk of re-offending has generally been shown to be higher for aboriginal offenders, the Manitoba analysis suggests it may be greatest for the Status group both on and off-reserve even though the on-reserve group had the lowest risk/needs predictions. This suggests that in some parts of the country risk factors may be different on and off-reserve, and that risk predictors must be formulated for reserves. It also suggests that general risk prediction scales are appropriate for the general aboriginal group. One explanation for high recidivism of the on-reserve group (in some areas) may be the environment of reserves, which is consistent with factors known to influence crime levels - high unemployment, poverty, family dysfunction, diminished social and community controls. This suggests that the communities to which the Status groups return (i.e., reserves and inner cities) may be more criminogenic than those to which non-aboriginal and Metis/non-Status offenders return. This is consistent with previous research about crime and disorder on-reserve and in inner cities, particularly those in western Canada.

There are two types of reintegration. The first is reintegration of offenders into home communities which are also the environments which caused their initial problems. In these environments, anti-social attitudes and certain pro-criminal life-styles and peer groups act inhibit the adoption of pro-social attitudes. The second type of reintegration is into families and communities which promote behavioural change and the adoption of pro-social values. The issue, therefore, is not only one of reintegration (as often suggested) but reintegration into the right environment.

The high recidivism of the Status group, as compared to the non-aboriginal and Metis/non-Status groups, suggests the need for change to their communities of origin – whether reserve or inner city. Unless people's lives change so their attitudes, peer groups and family relations also change, alterations to the criminal justice system or the creation of local justice initiatives will be minimal in reducing involvement in the correctional system. In a number of significant ways, aboriginal offenders are disadvantaged by their backgrounds, their communities, and their involvement with the criminal justice system. It is a vicious circle and one that is difficult to break.

Part VIII: Where Do We Go From Here?

A substantial reduction in the reliance on imprisonment is most likely to occur with sweeping systemic changes whereby both legal and administrative capacities are aimed at increasing the use of intermediate sanctions. As well, the use of diversion programs and the decriminalizing of certain offences are likely to reduce the burden on the courts in determining outcomes and sentences. A comprehensive community corrections act as well as a permanent sentencing commission might be a starting point for such changes as well the assurance that they are properly implemented and administered. It is imperative to actually use alternatives in order to make a difference in imprisonment levels, and to re-focus community sanctions so they are designed to assist offenders to reintegrate into communities, and not as mechanisms of social control designed to put people back into prison. Finally, these changes must be made acceptable to the community and the criminal justice system so that they are legitimized and have full support.

Some criticisms of alternatives, community corrections and community justice are discussed not to reinforce the status quo or to argue for more severe sanctions, but to highlight the way alternatives have been used and the often unrealistic expectations of community corrections and local justice given scarce resources and inflexible objectives. Ultimately, however, regardless of problems with these alternatives, they are still as effective and less costly in human terms than more punitive ones like imprisonment. The challenge is to broaden their use, monitor their delivery, and refocus them so they meet more humane objectives.

We do not have to look far to see the potential for reducing incarceration in Canada. There is considerable variation across the country in the way incarceration is used and provinces such as Ontario and B.C., which have large aboriginal populations but less disproportionate levels of aboriginal incarceration, have maximized the use of non-carceral dispositions, especially for fine

default, public drunkenness and other minor offences. Other provinces, such as Alberta, appear to have a heavier reliance on the use of incarceration which is not explained by the seriousness of the offences committed. However, it should be re-emphasized that the Prairie provinces also have the largest and most marginalized aboriginal populations. It is unreasonable to expect the criminal justice or correctional systems to redress this problem. But it is reasonable to expect they will not exacerbate it either.

Perhaps the most critical and immediate direction to pursue is to mount a campaign to educate the public about reducing the reliance on imprisonment and about using other methods to respond to offenders. Educating the public to be more supportive of intermediate sanctions as "real" sanctions is essential. It is also time to re-educate the public about myths and realities of criminal justice and corrections. Most importantly, the limitations of prisons in the resocialization process should be realized. One way to combat the trend toward punitiveness and to reduce crime is to increase interdependency among people. Where responsibility for offenders and offending expands beyond the boundaries of police, courts and prisons, the public cry for revenge may be stilled.

Part IX: Conclusions

The criminal justice system remains rooted in a reliance on the use of imprisonment which affects both aboriginal and non-aboriginal offenders alike, and places Canada among the highest users of incarceration in the world. How much this reflects judicial attitudes and/or the culture in which the Canadian criminal justice system functions, is debatable. The degree of ostracism and stigmatization directed toward offenders suggests the reliance on imprisonment by the criminal justice system is reflected in public support and is, therefore, an integral part of Canadian society. We speak reintegration and practice exclusion and stigmatization. We continue to incarcerate offenders who are low risk and for whom imprisonment is unlikely to be more beneficial than other sanctions, and probably does more harm than good.

A three-pronged approach to the treatment of aboriginal offenders should be considered. The first step would provide intensive pre-programming so that aboriginal offenders can derive the maximum benefit from mainstream programs, particularly those involving education, cognitive behaviour and life-skills; the second would continue cultural and spiritual content programs for those offenders wishing to participate in them, as these programs appear to attract aboriginal offenders and to give them a sense of identify often sorely lacking; the third would deliver the most effective programs within the proper context which depends on understanding the needs and realities of individual offenders.

How can the over-representation of aboriginal people in correctional institutions be reduced? The following steps might be considered:

- make a commitment to a different kind of justice which does not use the criminal justice system to deal with social problems;

- change philosophy about alternatives to incarceration and who is eligible for them, and to use them always in the first instance and prisons in the last;
- prohibit the use of incarceration for certain offences such as fine default, public order, administrative offences, and various kinds of parole and probation violations;
- have a solid understanding of the offender's needs for those individuals who do receive carceral sentences, and fit these with institutional programming and community resources;
- ensure quality and quantity of institutional programs;
- emphasize community corrections as a reintegrative tool as well as a mechanism of social control;
- understand regional variation in aboriginal over-representation in the correctional system, in the demography of aboriginal populations, and in the way the criminal justice system processes aboriginal and non-aboriginal offenders, in order to direct resources to the provinces, aboriginal communities and populations most in need, and to change any discriminatory attitudes toward aboriginal offenders.

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Although it is not possible to identify each of the individuals by name I would like to recognize their valuable contribution.

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Finally, I would like to thank all those individuals who took the time and trouble to fill out the questionnaires. I would also like to thank the many respondents who wrote me personal comments and gave their ideas and suggestions as well. I hope they will all find this research useful and that it reflects some of what they shared.

C.L.

FORWARD

A backward look at criminal justice initiatives and policies over the past two decades reveals a tendency to categorization, especially in politically sensitive areas such as aboriginal justice. The end result is that the discourse may be narrowed rather than widened, and isolation rather than a search for common denominators occurs. This is especially the case where groups who have been socially, economically and/or culturally marginalized are now participants in a "politics of resistance"[1] movement against mainstream institutions. The resistance may be aimed at the dominance of particular institutions but the larger movement is about transformative politics. Such is the case of aboriginal criminal justice in contemporary Canada.

How is an agenda for justice in the 1990's to be set in this environment of resistance and of social transformation where the role of law in society is increasingly unclear and undefinable because:

> *Deconstruction*[2] *in critical legal studies in the 1980's sought to undermine the authority of the law and to destabilize notions of legal reasoning, while post-modern analyses of law and social movements assaulted our claims to universal theories. Indeed, law has lost its heroic scaffold for social justice and the edifice within which the struggle for justice should take place both in popular consciousness and left-liberal scholarship (Merry, 1995:13).*

Foucault's contribution to modern theory was his insight that power is not centered exclusively in the state but dispersed throughout civil society.[3] Post-modernism operationalizes this theory, so that individual expressions of identity, role and culture have become the "moments of resistance" [4] which counter the dominance of modernist language and social science research. In aboriginal criminal justice these expressions of resistance have reduced the mainstream correctional language into a culturally-defined "healing" discourse, and empirical research into an incontestable "worldview". Nowhere is the tension between postmodernism and positivist research greater than in aboriginal criminal justice.

What is the future of aboriginal corrections in this time of redefinition and change? How are the needs of certain groups accommodated in light of others? How has isolation of groups and culture aided and/or impeded the search for broader solutions? What have we learned from both mainstream and aboriginal correctional programs and initiatives to lead us into the future? Do mainstream treatment approaches inform programming for aboriginal offenders? Should they? Are community corrections an improvement over prison? What is really known about alternatives to incarceration? How can the needs of both aboriginal offenders and aboriginal communities be

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[1] Merry 1995:11.

[2] 'Deconstruction' questions all traditional assumptions about the ability of language to represent reality.

[3] Snider, 1995a:31.

[4] ibid.

accommodated in a demanding political environment? Can transformative politics lead to transformative correctional policies?

These were the starting points for writing this document. They may appear confusing and contradictory at first glance but, we hope that taken together, they pave the way for a more imaginative analysis of aboriginal corrections. It will be left to the reader to decide if the discussion which follows provides such an analysis.

INTRODUCTION

This document reports on various aspects of aboriginal people and their involvement in the federal, provincial and territorial correctional systems in Canada. At the heart of aboriginal criminal justice in this country and elsewhere[5], is the issue of the disproportionate representation of aboriginal offenders in correctional institutions. Compounding this reality, is the commonly-held view of the over-use of prison for aboriginal offenders, and of the failure of the criminal justice system in its dealing with aboriginal people.[6] These are the main "problems" facing government leaders and bureaucrats who in recent years have struggled to reduce the number of aboriginal people incarcerated, while at the same time striving to change the perception of the system as unjust and unfair. A recent statement of Saskatchewan Justice describes its vision in this regard:

> *Our vision is to provide a fair, equitable and safe society supported by a justice system that is trusted and understood. Our system, of course, is respectful of and responsive to diversity, individual and collective rights, changing public expectations and community needs, including the needs of Aboriginal people.*

The numbers incarcerated and perceptions of the failure of the system to meet their needs, are also the main problems facing aboriginal people, but usually on a more intense personal and political level.

The solutions to these problems as put forward both by mainstream officials and aboriginal political bodies, organizations and individuals, have focused alternatively on the symbolic and the real. The symbolic has been about self-government and control; the real has been about change in programs and policy. The symbolic and the real are often inter-related. How much these initiatives alone or in unison have resolved any of the problems is still a question for which little empirical evidence exists. This document is an attempt to fill this gap by reporting on the results of information gathered from a variety of sources over the past few months.

The Purpose of the Research:

The purpose of this research is to explore the state of aboriginal corrections in contemporary Canada and to deliberate on the most critical issues. Through analyses of a variety of data, the state of knowledge in aboriginal corrections on several levels, including over-representation, regional variation in demographics and imprisonment, community corrections, release and recidivism, reintegration, risk, alternatives to imprisonment, etc., is better realized. At the same time, the research puts aboriginal imprisonment into a broader penological perspective by exploring both the similarities and differences of groups of incarcerated people. It argues that only by understanding similarities are differences properly understood and accommodated. If the analysis of the problem is wrong, so too are the solutions.

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[5] see Biles and McDonald, 1992; Broadhurst *et al*, 1994.

[6] see Hamilton and Sinclair, 1992; Rudin, 1995:3; Oka, 1995:199-210; Kingfisher, 1995:13.

The document is multi-layered where the theoretical and the applied are inter-related. At one level it engages in a philosophical discussion of imprisonment and discusses the reliance on imprisonment in Canada for dealing with certain groups, including large numbers of aboriginal people; at another level it is about the politics of change and transformation where the imprisonment of aboriginal people provides a platform for claiming redress;[7] at yet another it is about needs and realities of individual offenders and communities; finally, it is about "what works" in corrections and whose values and needs should be accommodated in determining success. Understanding the "state" of aboriginal corrections requires such a comprehensive approach.

The outline of the report is as follows. Part I explores the reliance on the use of imprisonment in Canada and compares this to other countries. It also examines the factors which influence the use of imprisonment. This is followed by a short discussion about who goes to prison. Part III discusses aboriginal correctional issues including over-representation and characteristics and offences of aboriginal offenders. Part IV is a theoretical framework for understanding the phenomenon of over-representation. Programming is the focus of Part V, where the philosophy and effectiveness of mainstream and aboriginal-specific programs are considered. Part VI presents the correctional personnel and inmate survey findings. Part VII explores the four R's - risk, release, recidivism and reintegration, in relation to aboriginal and non-aboriginal offenders. This is followed by a section called "Where Do We Go From Here? The conclusions, best practices, recommendations for research, references and appendices are presented in Part IX. Where applicable, tables and figures are presented at the end of each chapter.

This document is constructed to enable the reader to read it as a complete volume or to select chapters of particular interest. The findings are summarized at the end of each chapter.

Methodology:

The information was gathered in a number of ways. These included a review of the aboriginal and non-aboriginal, national and international correctional literature and a survey of federal, provincial, territorial and aboriginal correctional personnel, aboriginal offenders, and communities in order to elicit their views on a number of correctional issues particularly those relating to aboriginal offenders. It also reviews evaluations of select aboriginal correctional projects. Quantitative data were also collected from the Canadian Centre for Justice Statistics (CCJS), Correctional Services Canada (CSC), and five provinces.

Correctional personnel questionnaires went sent to provincial and territorial Heads of Corrections, regional Deputy Commissioners of Correctional Services Canada, and aboriginal organizations which provide correctional services, for distribution and completion. Community questionnaires were sent to aboriginal organizations and directly to some communities with justice committees for distribution and completion. Because of time constraints, inmate survey questionnaires were distributed only to Saskatchewan provincial institutions and to three Prairie Region federal

[7] At a recent conference on the care and custody of aboriginal offenders the Grand Chief of the Sto'Lo Nation stated: "What we want to do is revive our own justice system. What I suggest is that we take ownership of conflict resolution in a serious way and not by accepting delegated legislation" (1995:40).

institutions - Drumheller, Saskatchewan Penitentiary and Stony Mountain. While it was requested that all survey questionnaires be distributed as randomly as possible, representativeness of the respondents is not assured. Nor is it possible to determine the proportion of correctional personnel and community responses as the number distributed is unknown. Overall, 44% (N=502) of the inmate questionnaires distributed in the institutions were completed and returned.

General CCJS data were analyzed and specific community and institutional correctional data were requested from CSC and from B.C., Alberta, Saskatchewan, Manitoba and Ontario for the period 1988-1995. Quantitative data were collected to compare jurisdictions and changes in aboriginal and non-aboriginal offenders, offences, admissions, sentences, and releases in institutions and community corrections over time. The provinces selected were those with the largest numbers of aboriginal people.

Finally, a Manitoba dataset, created for purposes of examining the validity of certain measures of the Wisconsin Risk Prediction Scale for provincial offenders terminated on probation, was re-analyzed to determine the value of the risk prediction instrument for aboriginal offenders, and differences in risk and recidivism among aboriginal and aboriginal/non-aboriginal groups.

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PART I. USE OF IMPRISONMENT

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1. A Reliance on Imprisonment

The use of imprisonment may be viewed as one measure of a society's level of punitiveness.[1] While it may be true that, generally speaking, contemporary western industrial societies are becoming more punitive, the variation in imprisonment rates that exists between, as well as within, countries complicate such sweeping conclusions. The United States' incarceration rate per 100,000 population, for example, is approximately ten and four times greater than that of Netherlands and the United Kingdom, respectively.[2] Further, wide discrepancies exist even in jurisdictions with fairly similar political and economic systems. While the United States may have aggregately the highest imprisonment rate of any nation in the world,[3] its composite states demonstrate a remarkable degree of variation.[4]

Similarly, although the current trend generally suggests a significant growth in prison populations, this surge has not been constant. The United States, for example, has had significant fluctuations, most notably during the 1960s and early 1970s when declining rates were experienced.[5] Nor has there been a consistent expansion across jurisdictions as some areas are currently reporting declining populations. Preliminary analysis by Nuttall and Pease (1994) reveals that the trend in England and Wales between 1955 and 1991 is characterized by an initial steep decline, followed by a slow increase, before returning back to a decline. Similar indications of low or decreasing populations can be found in Canada, West Germany, Denmark, Netherlands, and Australia.[6]

The remarkable degree of variation in imprisonment rates points to two issues in the incarceration literature. The first issue is methodological, concerning the validity, reliability, and interpretations of different measures of imprisonment and their implications for intra- and cross-national comparative studies of custodial use. This matter highlights some of the problematic aspects of documenting imprisonment use suggesting that some of the differences and discrepancies found in the literature partly reflect the variation in the methodological approaches. McMahon (1992) and Young and Brown (1993) provide excellent reviews of the basic problems in literature involving the various population counting rules and procedures and the presentation and interpretation of the derived figures. Remand and jail populations, for instance, are frequently excluded from

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[1] see Young & Brown, 1993.

[2] Young and Brown (1993) note that these rates are not taken from the same year. Figures for the United States mark the prison population during 1989, while for the United Kingdom, these numbers are derived from 1990.

[3] In 1990 the United States had an incarceration rate of 455 per 100,000 ahead of second and third-place South Africa and the former Soviet Union, respectively. This figure is expected to increase by 30% by 1995 (Mauer, 1992).

[4] McMahon, 1992; Zimring & Hawkins, 1991.

[5] Langan, 1991.

[6] For information by country see McMahon, 1992; Graham, 1990; Fiselier, 1992, Downes, 1988 and Walker, Collier & Tarling, 1990, respectively.

incarcerated population calculations even though they represent a substantial portion of the total imprisoned population. Insufficient attention is paid to the theoretical and empirical differences and implications of different population descriptors, such as admissions data (i.e., the number of people entering the system) and count data (i.e., the number of people within the system).

The extent of the variation in incarceration rates also suggests the need to reflect upon the second issue - the question of determining an *appropriate* level of imprisonment. Unfortunately this question is infrequently addressed explicitly.[7] While moral, political, and financial considerations all apply, "there is no simple and adequate measure of the "right" level of custody".[8] Much research, however, has been conducted towards identifying the variables related to imprisonment levels. They may be broadly divided into two categories: criminal justice and societal.

Criminal Justice

These factors suggest that the functioning of criminal law and justice, and its agents determine incarceration rates. A frequent explanation submits that the stricter applications of criminal laws account for increases in custodial use. The first agents who may affect incarceration rates are the police through their apprehending and arrest practices. The evidence, however, suggests a limited or modest role played by the police.[9] The obvious reason for their limited impact is that increases in arrest practices need not result in prison commitments because the courts primarily decide who is to be incarcerated.[10] This would indicate that prosecutors and the courts themselves play a more important role in determining incarceration rates.

The actions of court agents might suggest that criminal law and policy themselves are primarily responsible for levels of incarceration since they can influence the court's decisions. More specifically, changes in sentencing procedures such as determinant and mandatory sentencing have been linked to incarceration rates because they limit or eliminate the discretion of sentencing judges. The research suggests that such changes have a minimal impact.[11] As Tonry (1987) observed in his study of mandatory sentencing laws in Massachusetts, Michigan, and New York, judges, for less serious charges, can circumvent laws they believe to be inappropriate by dismissing charges and diverting offenders to avoid applying the statute. And for more serious charges, "the mandatory sentence laws are often redundant in that offenders are, in any case, likely to receive sentences longer than those mandated by statute." (p. 35).

The potential influence of the parole board on the length of sentences served is also illustrated in its ability to alleviate prison crowding through its power to release[12]. While the parole system may act as a "safety valve" for decreasing or stabilizing prison populations, it may also have the

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[7] Zimring & Hawkins, 1991.

[8] Nuttal & Pease, 1994:317.

[9] e.g., Langan, 1991; Marquart, Bodapati, Walker, Collier, & Tarling, 1990.

[10] op cite 10.

[11] Marvell & Moody, 1991; Zimring & Hawkins, 1991.

[12] see Marquart et al., 1993; Blumstein, 1988; Bottomley, 1990.

opposite effect of increasing populations through the incarceration of parole violators, who sometimes serve sentences longer than what they would have had without parole.[13]

The courts and the parole system, nonetheless, do not operate within a vacuum. They are not only influenced somewhat by factors within the criminal justice system but as some have contended, their behaviour is highly politicized and subject to public scrutiny.[14] This would indicate the need to contextualize the criminal justice system's actions within societal structure and conditions, recognizing any external factors which may influence incarceration rates.

Societal

Perhaps the most popularly studied variable in relation to incarceration rates is crime. Fluctuations in crime rates will, it is hypothesized, be in direct proportion to changes in imprisonment rates as the latter is, theoretically, a response to the former. The literature is replete with confusing and contradictory evidence, generally indicating that crime and incarceration have no clear, consistent relationship with each other. And if there is one it is likely to be relatively small.

However, as Young and Brown (1993) point out, much of the research tends to be simplistic methodologically. For example, studies typically analyze aggregate crime statistics which tends to obscure differences in types of crime. When separating property and violent crime, Ekland-Olson, Kelly, & Eisenberg (1992) found incarceration to be related to the former but not the latter. Zimring and Hawkins' (1991) comment on U.S. crime and incarceration data between 1949 and 1988 perhaps best describes the state of current knowledge regarding the issue: "[Our data] demonstrate[s] the lack of direct and simple relationship that would enable us to successfully explain most fluctuations in the rate of imprisonment by reference to changes in crime rates." (p. 124)

Society's economic conditions have also been proposed as determinants of incarceration rates. More specifically, unemployment has been the main variable examined[15], theorizing that it either precipitates conditions for crime (e.g., poverty) which consequently increase prison rates; or casts a shadow of "unorderliness" and "marginality" among the unemployed, thus requiring a tightening of social control by the state through incarceration. The evidence for this view is mixed[16] as some

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[13] In the U.S., longer sentences may be achieved through the prosecution of the offence of violating parole or for other offences committed while in violation (Young & Brown, 1993).

[14] see Young & Brown 1993; Petersilia, 1993; Tonry, 1994b.

[15] "Most of the measures of economic activity are highly correlated with each other and the explicit theoretical linkage is more substantial with employment and unemployment than with any other measure of economic growth and activity." (Zimring & Hawkins, 1991, p. 134). Other variables, however, have been studied. Examples include inflation rates (e.g., Lessan, 1991), public revenue (e.g., Michalowski & Pearson, 1990), public wealth (e.g., Taggart & Winn, 1993).

[16] Young & Brown, 1993; Inverarity & McCarthy, 1988.

researchers have found relationships, while others have not.[17] When there is a stronger relationship it tends to exist with respect to remand and short sentence populations.

The most recent and perhaps the most convincing argument in the literature is one that links broader socio-cultural attitudes with custodial use. While culture has been directly measured and linked to incarceration,[18] there seems to be a few indirect indications of its involvement. The fairly strong regional patterns in incarceration rates in the U.S. is one example which suggests that a broader cultural context is at work[19]. Selke's (1991) comparison of punishment systems in Denmark and the United States suggests that the dramatic differences in penal practices and philosophy between the two countries may be due to differences in cultural ideologies, attitudes and values. The author observes, for example, that Denmark's lower reliance on imprisonment reflects broader implicit attitudes concerning crime, justice, and pragmatism.

The appeal of the sociocultural perspective is that it is compatible with many of the other theorized variables associated with incarceration. Zimring and Hawkins (1991) have noted some of the problems of this view and its subsequent research and point out that cultural attitudes alone, do not automatically determine incarceration rates, at least not in any simple and direct way. Nonetheless, as they imply, a successful understanding of incarceration use is likely to include a complex, probably varying, interaction of factors that include a number of variables. Advocates of the sociocultural perspective would merely suggest that sociocultural factors usually play some sort of role, interacting with other variables. Thus, while the specific formal structure of the criminal law may play a significant role in determining incarceration, "the underlying policy parameters are driven or at least constrained by the ... cultural framework within which they are being formulated.[20] For example, the stabilizing potential of parole boards for prison populations may be offset by public pressure and criticism during periods of heightened concern about law and order (often driven by the media). Similarly, there is also some support for an interaction between economic conditions and the cultural attitudes within these conditions in influencing imprisonment rates.[21]

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[17] e.g., Box & Hale, 1982; Lessan, 1991; Arvanites, 1993; Michalowski & Pearson, 1990.

[18] e.g., Taggart & Winn, 1993; Wirt, 1983.

[19] see Michalowski & Pearson, 1990; Zimring & Hawkins, 1991.

[20] Young & Brown, 1993:39-40.

[21] see Pease 1991.

The Effects of Imprisonment

As mentioned earlier, there is currently no basis for determining the "appropriate" amount of incarceration. To determine this amount it would appear necessary to discover the effects of imprisonment. Incarceration is popularly perceived as a means of reducing or controlling crime through individual or general deterrence. Thus, the higher the imprisonment rate the lower the crime rate. The literature, however, does not seem to support this view. While there is some indication of a deterrence effect, usually for property crime,[22] the research generally indicates otherwise.[23]

If a reliance on imprisonment does not effectively reduce crime, what other effects might it have? One frequently cited consequence is prison overcrowding. In 1990 only nine U.S. state prisons were operating below their rated capacity and nation-wide, prisons were overcrowded by a factor of almost 30%.[24] Of course, some jurisdictions have countered with spending enormous amounts of money on prison construction (e.g., California) but critics contend that this solution is largely a waste of money.[25]

Institutional overcrowding may also pressure other sections of the criminal justice system. For example, population caps are a frequent response of the courts to reduce overcrowding. Jail populations have been known to increase due to prison overcrowding as individuals await transfers to capacity-filled State prisons. Lastly, as alluded to earlier, parole systems may act as safety valves to alleviate prison crowding.

The reliance on imprisonment may also result in the misuse or mismanagement of prison space by placing individuals in the system who should not be there, thereby, occupying potential space of those who truly deserve incarceration. Irwin and Austin (1994) contend that, contrary to popular opinion, the vast majority of inmates admitted to U.S. prisons commit either non-violent offences or parole violations. Immarigeon and Chesney (1992) similarly argue that the women's imprisonment rate is disproportionate to the need for public safety. Although they are being incarcerated more frequently women still do not pose any more danger than they did in the past. McMahon (1992) explains that the high incarceration rate in Ontario during the 1950s was largely a product of the inability of poor and homeless people to pay their fines for public intoxication offences. Such an account is consistent with Welch's (1994) and Irwin's (1985) view that correctional institutions (i.e., jail) merely act to warehouse the socially undesirable. Incarceration

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[22] see Ekland-Olson, Kelly, & Eisenberg, 1992; Marvell & Moody, 1994.

[23] see Clarke, 1994; Hofer, 1991; Steffensmeier & Harer, 1993.

[24] Irwin & Austin, 1994.

[25] The U.S. has recorded the greatest increases in recent times largely as a result of the increased use of illegal drugs, sentencing policies which prescribe imprisonment, and the hardening of attitudes resulting in greater public demands for imprisonment (U.S. Dept of Justice, 1992). In 1991, Florida was found to have dramatically increased the use of imprisonment for drug offences which in turn accelerated the use of early release. The end result was that the state had the highest use of prisons but the shortest length of stay which translated into little or no treatment for offenders (Austin, 1991a).

is seen as an oppressive force controlling the disadvantaged and the marginalized, whose mere existence, rather than their capacity for violence, is dangerous to the status quo.

All in all, what these findings suggest is that a reliance on imprisonment may have the adverse effect of decisions being made, not on the merits of individual cases, but rather on the basis of external factors which consequently result in questionable uses of imprisonment.

2. A Perspective on Imprisonment in Canada

Despite various attempts at sentencing reform over the years and a belief in and increase in community corrections, Canada is still among the most frequent users of incarceration in comparison to other Western [26] and to many Asian and Pacific countries.[27] In 1993-94, there were on average more than 154,000 offenders under the jurisdiction of correctional service agencies in Canada - 79% were supervised in the community while 21% were incarcerated.[28] Canada's imprisonment rate is estimated to be 2.5 times higher than the Netherlands, 1.4 times higher than Australia and 1.1 times higher than England and Wales. It is also marginally higher than New Zealand's.[29]

The 1989 and 1992 International Crime Surveys show Canada, New Zealand, the Netherlands, Australia, the USA and Poland, among the highest, and northern Ireland and Japan among the lowest, of the twenty or so countries surveyed about rates of victimization. While still in the high category, risks of assaults in Canada were lower than in New Zealand, the USA, and Australia. Between 1988 and 1991, the risk of victimization for many crimes in Canada either decreased or showed only moderate increases.[30] This suggests that high levels of incarceration in Canada do not correspond to disproportionate levels of crime.

3. Understanding Incarceration and Community Corrections Across Canada

Understanding the use of incarceration is much more complex than one would initially imagine. But the difficulty is not unique to Canada. Regional differences in Australian imprisonment rates have been more thoroughly analyzed, but the variance among states, even when controlling for characteristics such as the percentage of young males and aboriginal people in the population, the

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[26] see Report of the Canadian Sentencing Commission, 1987; McMahon, 1992; Christie, 1993.

[27] The rate of imprisonment is higher in Canada than in Australia, Bangladesh, China, Fiji, Indonesia, Japan, Nepal, Sri Lanka, Papua New Guinea, and the Philippines. The figures are also similar for the use of imprisonment for unconvicted remandees although of the countries listed above, Bangladesh, Singapore, Papau New Guinea, and Sri Lanka have higher rates than Canada (Australian Institute of Criminology, 1994).

[28] CCJS, 1995.

[29] Young and Brown, 1995a:5.

[30] see van Dijk and Mayhew, 1992:31-41.

quantity of crime, and the relative seriousness of crime and unemployment, remains unexplained. The conclusion reached was that administrative traditions and differences in the punitiveness of community attitudes may account for the variance.[31] No such conclusions have yet been reached in Canada.

The initial reaction to aboriginal incarceration and risk of incarceration rates is to automatically assume that charging and prosecution are more frequent and sentencing more punitive. But what is known about these factors?

a) Incidents Across Jurisdictions:

It is common knowledge (supported by police data and victimization studies) that crime increases from east to west (CCJS, 1993). Generally, rates of crime are higher in the western than the eastern provinces. The 1990 victimization report showed the rate of victimization highest in B.C. and lowest in Quebec.[32] In 1993, Criminal Code incidents reported to police for adults and youth per 100,000 population, were highest in the two territories - Yukon and N.W.T., followed by the Prairie provinces and B.C.. When examining rates per 100,000 total population of actual violent offences reported to police, B.C., Manitoba and Saskatchewan were highest. Given that violent offenders are generally considered a higher risk, this factor may explain some of the disproportionality in aboriginal incarceration levels in particular *provinces (Table 1.1 Rates of Criminal Code Incidents, Provinces and Territories, 1993).* See page 20 for tables.

b) Incidence and Charging:

It is also true that considerable variation in charging exists but the "lower in the east and higher in the west" pattern does not hold. In fact, rates of charging (based on actual incidents cleared by charge) from 1990-1993, inclusive, showed charging for all incidents to be highest in Newfoundland, Saskatchewan[33] and Prince Edward Island, and lowest in B.C., despite the fact that B.C. has one of the highest rates of reported crime in the country. The territories, Saskatchewan and Manitoba had the highest rates of charging for violent offences *(Table 1.2 % Incidents Charged, 1993).* Interestingly, the numbers of youth charged (per 10,000 youth in the 12-17 year range) in the territories and in Manitoba, Saskatchewan, and Alberta (the jurisdictions with the highest aboriginal incarceration rates in Canada) are appreciably higher than in the other provinces and by far the lowest in Quebec (*Table 1.3 Rate of Youth Charged and Daily Count/10,000*). If the relationship between juvenile and adult involvement holds as found in some research,[34] this may account for some of the adult, aboriginal over-representation problem in those provinces. The question it raises is how much aboriginal youth charging lies in

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[31] Broadhurst, 1996:70.

[32] Sacco & Johnson, 1990.

[33] This means that if police in Saskatchewan, for example, are charging more often than police in B.C. for similar offences, a problem is created for the correctional system in Saskatchewan.

[34] see LaPrairie, 1994.

discrimination in the criminal justice system, offending patterns, or in characteristics of the aboriginal populations in those provinces.

c) Charging and Incarceration:

Do charging data correspond to levels of incarceration in provinces and territories? Without prosecution and conviction data this is a difficult question to answer. Provinces with higher charging levels may see fewer convictions than provinces where charging is used more sparingly.[35] Prosecutorial decision-making in provinces with higher levels of charging (such as Saskatchewan) may mediate police charging practices. Judges may moderate the impact of high levels of charging. Recent caseload data[36] reveal that of the six jurisdictions studied, Ontario dismissed, withdrew or stayed the most, and Quebec the fewest charges; guilty pleas were highest in P.E.I. and lowest in Ontario, Saskatchewan and the Yukon; and Saskatchewan courts issued more bench warrants.[37]

Although charging of youth in the three Prairie provinces of Alberta, Manitoba and Saskatchewan is high in comparison to other provinces, their youths in custody per 1,000 charges is mid-range (see Table I.3). The rate of sentenced admissions to federal and provincial institutions of those charged is not generally higher in Saskatchewan than elsewhere.[38] Admittedly, however, these findings do not negate the fact that where there is higher charging there is an increased risk in the use of incarceration. Without related offence and prosecution data, however, the effects of charges are difficult to interpret.

d) Federal/Provincial and Territorial Incarceration:

Despite a population increase in Canada of 5.3% between 1989-94, the increase in federal institutions was nearly four times, and in provincial institutions two times the increase in population. Four times as many people were placed on probation. There was little consistency across the country in remand, and federal and provincial sentenced counts. Some provinces such as B.C. and Nova Scotia, had large increases in remand but not sentenced populations. In other provinces there was a much larger increase in federally than provincially sentenced persons.[39]

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[35] Charging rates may also depend on whether police or prosecutors make the charging decision. For example, prosecutors in Quebec, B.C. and New Brunswick and police in Saskatchewan and all other provinces, make the decisions.

[36] see CCJS, Adult Criminal Court Caseload Trends 1991-92 to 1993-94, 1995e.

[37] The B.C. finding of the lowest charging rates is of interest considering that Vancouver has one of the largest aboriginal populations of all major urban centres. Research has established that the majority of offences are committed by aboriginal people in urban centres yet B.C. has the least disproportionate incarceration rates as compared to other western provinces and the territories.

[38] In 1993-94, the rate of federal sentenced admissions per 10,000 adults charged ranged from 2369 in Alberta to 911 in Nova Scotia; excluding fine default admissions it ranged from 452 in Manitoba to 1906 in P.E.I. Saskatchewan rates for sentenced admissions with and without fine defaults were 1608 and 1029, respectively. Ontario's were 1365 and 1241. Newfoundland, New Brunswick, Quebec and the Yukon were all higher than Saskatchewan in both categories. Provincial rates of sentenced admissions from 1989-1994 were higher in Alberta, Quebec, New Brunswick, and P.E.I. than in Saskatchewan. (CCJS, 1994a:32).

[39] Ministry of the Attorney General, B.C., 1995.

Over the same period of time, the average count of inmates in federal custody increased 16.7%, and the highest increase was in the Atlantic provinces. Only Pacific Region showed a decrease.[40] In 1994-95, admissions to federal institutions decreased by 5%, the first drop in many years.[41]

The provincial inmate population increased 9.8% from 1989-94. Overall, sentenced admissions increased 4% with five jurisdictions showing decreases - P.E.I., Ontario, Manitoba, Saskatchewan and the Yukon. Remand admissions increased by a third between 1989-90 and 1993-94, and Quebec and Ontario accounted for the largest number of remand admissions. These two provinces, as well as Manitoba and the Yukon, exceeded the national rate of admissions. The Atlantic provinces, Manitoba and Alberta, showed decreases in their remand admissions. During that period, Prince Edward Island, Alberta and New Brunswick had the highest, and Nova Scotia, B.C. and Manitoba the lowest levels of sentenced admissions per 1,000 adults charged for all offences.[42] Only in Manitoba did the rate of incarceration per 10,000 adults charged decrease, and Newfoundland showed the greatest increase[43] (*Table I.4 Sentenced Admissions to Provincial Custody by Adults Charged*).

e) Types of Offences and Incarceration:

In examining sentenced admissions from 1989 to 1994 for *Criminal Code*, federal and provincial statutes and municipal by-laws, there is considerable variation across the country. While the majority of admissions are attributed to *Criminal Code* offences in all jurisdictions, these range from a low of 63% in Quebec to a high of 94% in N.W.T. (although the N.W.T. reports multiple charges so the raw figure is somewhat misleading). There are more admissions for federal statutes in B.C., and more for provincial and municipal offences in Quebec and Alberta, than in other provinces.

Sentenced admissions for crimes of violence were highest in Manitoba, the Yukon and Newfoundland, and lowest in Alberta and Quebec; property offences were highest in Nova Scotia, and impaired driving in Prince Edward Island; the N.W.T. had the most "other C.C." offences; British Columbia drug offences; and Quebec, followed closely by Saskatchewan, the most fine defaults.[44] Other *Criminal Code* were highest in the territories and Alberta and lowest in P.E.I.

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[40] CCJS, 1994a:41.

[41] CSC, 1995:1.

[42] In 1993-94, females accounted for 9% of all admissions to provincial institutions across Canada. Saskatchewan and Alberta (the two provinces with the highest levels of aboriginal incarceration) reported admissions of females above the Canadian average - 11% and 12%, respectively (CCJS, 1994a:34).

[43] It is unclear if decreases or increases were the result of changes in offending, charging and/or sentencing practices.

[44] Fine default admissions accounted for 39% of Quebec, 36% of Saskatchewan, 35% of Alberta, 25% each of Manitoba and P.E.I., to a low of 13% in the Yukon and Nova Scotia. Data for four years in New Brunswick and two years in Ontario were not available. In earlier research, Hann and Kopelman (1987:15-16) found inter-jurisdictional differences in the composition of custodial admissions. For example, for alcohol-related driving offences, fine default admissions accounted for 40% or more of custodial admissions in some provinces and 25% in others.

In federal institutions in the Ontario, Prairie and B.C. regions in 1993, more people were serving sentences for murders and violent offences than in Atlantic and Quebec regions.[45] In all regions, Schedule 1 offenders were the highest single category of admission type in 1994 (Table I.5 Type of Offence by Region for New Federal Admissions. 1993-94).

In 1993, impaired driving was the most frequent conviction, ranging from 19% of all convictions in Quebec to 32% in P.E.I.. Interestingly, Assault or Theft Under were the next highest in all jurisdictions except in Saskatchewan, where it was Fail to Appear. This is an important finding as it has long been known that aboriginal people are disproportionately represented in administrative offences including fail to appear, fail to comply, administration of justice.[46]

f) Sentence Lengths:

In 1993-94, sentenced admissions of less than one month accounted for 38% of all admissions, while 82% of all admissions were for six months or less. The median sentence length on admission to provincial facilities was 31 days, and to federal penitentiaries, 46.3 months. In the five jurisdictions where court data were available, the median length of prison associated with the most serious conviction was 14 days in P.E.I., 30 days in the Yukon, 40 days in Nova Scotia and 60 days in Quebec and Saskatchewan. There is considerable variation. In 1993-94, sentences of less than one month ranged from 15% in the N.W.T. to 67% in P.E.I.; those greater than one year ranged from 2% in New Brunswick to 20% in Nova Scotia. Saskatchewan was mid-range in all sentence length categories.[47]

g) Community Corrections:

The move toward community corrections began in the mid 1960's and was in full swing in the 1970' and 80's.[48] The use of probation generally increased in Canada between the years 1989 and 1994 as it had since 1975. Despite the fact that imprisonment is the most obvious and severe response to crime it is by no means the most frequently used one. Fines and community corrections in the form of probation, community service orders, restitution etc., are the most common dispositions.[49] In 1993-94, the average count of offenders on probation exceeded 102,000, an increase of 40% since 1989-90. As there has not been a corresponding resourcing of

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[45] for Schedule of offences see Appendix.

[46] These offences comprised 20% of the most serious convictions in Saskatchewan as compared to 18% in Quebec, 15% in the Yukon, 8% in Nova Scotia and 6% in P.E.I.. Prison was the most serious sentence in 51% of all cases resulting in convictions in P.E.I., 24% in Nova Scotia, 27% in Quebec, 31% in Saskatchewan and 44% in the Yukon (CCJS, Adult Criminal Court Statistics, 1995c:5).

[47] CCJS, 1994a:36.

[48] see McMahon, 1992.

[49] In analyzing case characteristics from five courts in Canada, it was found that a minimum of 30% of the cases received a probation order and a fine was issued in 35% of the convicted cases in the Yukon, and in at least 50% of the convicted cases in the other four provinces, including Saskatchewan. Fines were highest in P.E.I. and lowest in Quebec (CCJS, 1995c:5).

community programs, this would suggest a change in sentencing practices.[50] However, recent data also show an increase in prison admissions.[51]

Between 1989-1994, probation intakes increased more rapidly than crime rates but probationers were older and received longer terms of probation. Most probation intakes were for *Criminal Code* offences. Probation counts increased 37% between 1989-90-1992-93 in all jurisdictions except the Yukon. The Atlantic provinces experienced more increase than the Prairie provinces. Some increases (in Newfoundland, for example) resulted from longer terms of probation. The highest rates of probation counts per 10,000 adults charged were in the Yukon , followed by Ontario. and P.E.I.; the lowest rates were in the N.W.T., Alberta and Saskatchewan.[52] Low counts may result from shorter periods of probation. However, in provinces with both low counts and low intake rates (Saskatchewan, Alberta and the N.W.T.) probation may simply be used less and other dispositions such as fines more. For some groups, such as aboriginal people, the end result may be significant admissions to provincial institutions for fine defaults.

In comparing use of imprisonment, probation and fines in the five jurisdictions for which court data are available in 1993, the variation is considerable. P.E.I. relies on imprisonment more heavily than the other jurisdictions in all offence categories (particularly traffic), and Nova Scotia, followed by Quebec and Saskatchewan, the least. Saskatchewan generally uses more fines.[53] Quebec uses probation more often for violent, property, and traffic offences.[54]; Ontario and Alberta used incarceration for violent offences more often. Incarceration for property and Other C.C. offences was similar in four of the provinces but highest in Quebec, the Yukon and P.E.I.

Overview

What does all this tell us? What we do know is that Canada is among the heaviest users of imprisonment in the world, particularly for offences resulting in short sentences. We are less clear about the reasons for this or about regional variation in the reliance on imprisonment.

Existing data do not provide enough consistent information to reach any firm conclusions about variation in the use of imprisonment across the country except that the use of imprisonment has generally increased since 1989-90. There is no clear pattern which makes it possible to conclude there is a particular over-reliance on imprisonment in any one jurisdiction. However, two provinces have higher rates of sentenced admissions per 10, 000 adults charged than others. - P.E.I. (which appears to have a disproportionate number of impaired driving offences), and Alberta (which does not). The Territories and the Prairie provinces have the highest counts. There

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[50] CCJS, 1995a.

[51] CCJS Cat. 85-211, 1994a.

[52] CCJS Juristat, Vol.15(4), 1995a:6-7. Averaged for years 1989-1994.

[53] In 1993, in Saskatchewan 75% of the cases appearing before the courts resulted in convictions, and of those 50% received fines, 23% probation and 31% custodial sentences. Saskatchewan convictions were similar to other provinces and their use of custodial sentences mid-way between the others.

[54] CCJS, Adult Criminal Court Statistics, 1995c.5

is some evidence these jurisdictions may be dealing with different offender populations. The low charging rates and aboriginal incarceration in B.C. is a compelling finding that should be explored further as should high charging levels in other provinces such as Saskatchewan.

A number of other factors also come into play in the use of incarceration. These include type of offence, charging practices, conviction rates, and sentencing. Existing literature shows considerable variation across the country in charging and sentencing[55] but prior record is rarely taken into account.[56] Roberts (1988:38) argues that variability is probably due to unwarranted sentencing disparity. Research on the role of race in accounting for disparity has, however, generally found its effects to be limited[57], particularly in comparison to seriousness of offence and prior record.[58] Several commentators have noted that systemic discrimination, due to particular social and economic circumstances of people who come before the courts, may influence sentencing decision-making whereby incarceration is selected over a community-based option.[59]

Research documenting aboriginal over-representation, for example, usually relies on admission and not count data. Used alone, sentenced admissions can be misleading in portraying the nature and magnitude of the problem and in providing an accurate number of aboriginal people involved. Short sentences and release to fine option programs mean the same people may be admitted over the period of one year so admission data may be inflated. Another problem is that in the search to reduce admission levels, attention may be diverted from the more "hard-core" offenders who are most likely to be captured in population count data. This is the group most problematic to the criminal justice system but often ineligible for alternatives to incarceration.

The difficulty in using sentenced admissions to analyze fine defaults is that in most jurisdictions a fine defaulter can elect entry into a fine option program at any time including on admission to jail.[60] An individual may appear in sentenced admissions but have spent only a few hours or days in custody. In Saskatchewan in 1994-95, for example, the mean number of days served on a fine default admission was 9.3. Offenders not released to fine option programs may have been refused entry because of past failures on programs or refusal to attend.

Characteristics of offenders, available alternatives to imprisonment, geography (which affects the availability of bail and fine options), existing resources, public attitudes toward imprisonment, prison capacity, administrative traditions, cultural attitudes and penal values, also influence the use

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[55] see CCJS,1993a,b;1994a,b;1995a,b,c,d,e; Hann et al, 1983; Roberts, 1988; Hann and Kopelman, 1987.

[56] Using Hann's data, Roberts (1988:35-36) provides some examples of this variation. The median sentence length for common assault in Quebec was one week versus five months in Saskatchewan. Cases of assault causing bodily harm received on average 39% custodial sentences, while the Ontario statistic was 63%. For uttering, the percentage receiving custodial sentences in Saskatchewan was 33% compared to 60% in the province of Quebec.

[57] see Hagan, 1974; Stenning, 1993; Roberts and Doob, 1994.

[58] One of the few research studies to explore cultural and structural factors and aboriginal imprisonment, found the most association between a number of demographic and socio-economic factors and dependent imprisonment variables (Muirhead, 1982).

[59] see LaPrairie, 1990; Roberts and Doob, 1994.

[60] CCJS, 1993a:35.

of imprisonment. For example, recent research on native people in two eastern and two western inner cities, found the western group generally more marginalized.[61] The importance of this is highlighted in Saskatchewan which has the highest rates of aboriginal incarceration, more administrative and fine default admissions (which suggest more chronic involvement in the criminal justice system), but with intensive supervision and electronic monitoring programs in place.[62] According to Wilkins and Pease's theory of cultural attitudes and penal values, Saskatchewan, with its stronger socialist tradition, is more likely than other provinces to be less punitive.[63] In provinces such as Alberta, with a highly competitive and individualistic ethos, the factors which influence the use of imprisonment may be different.

Nor do public opinion surveys on criminal justice provide much enlightenment about variation in aboriginal incarceration. There are indications that westerners, particularly those in B.C., hold more punitive views on capital punishment and appropriateness of sentencing, but on other issues such as boot camps, people in Manitoba and Saskatchewan were the least supportive.[64] More punitive views do not necessarily translate into more punitive practices as lower charging and aboriginal incarceration data from B.C. reveal. Less sympathetic views on general aboriginal issues, as expressed by Quebec respondents in an Angus Reid poll in 1994, also do not translate into increased aboriginal incarceration levels. On more general aboriginal issues, higher proportions of those groups most supportive were in the Prairie provinces, and fewer in B.C. and Quebec. Prairie views were similar to those in the Atlantic provinces which, by contrast, have low aboriginal incarceration.[65] Interestingly, westerners perceive natives on-reserve to be better off than natives in cities while the opposite perception is held in the east. This perceptions may reflect the more obvious and visible marginalized situation of aboriginal people in western cities.[66]

Economic data may be more useful in understanding regional variation in incarceration levels. The 1991 Census revealed that Saskatchewan had the lowest labour participation rates for both male and female on-reserve registered Indians among all the provinces and territories.[67] Ontario and British Columbia had the highest provincial participation rates and Saskatchewan the lowest, followed by Nova Scotia/Newfoundland (where employment levels for everybody are generally lower) and Manitoba. Off-reserve labour force participation levels showed similar trends - registered Indian participation is lowest in Saskatchewan and Manitoba, and highest in Ontario and the Maritimes (Table I.6 On and Off-Reserve Registered Indians and Metis by Labour Force Participation, 1991). In all provinces except Alberta where it is similar, Metis labour force participation is higher than registered Indians. **Comparing <u>total</u> aboriginal (all aboriginal groups) to non-aboriginal labour force participation level reveals similar levels in all provinces except Saskatchewan, Manitoba and Alberta, where aboriginal levels are lower.**

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[61] LaPrairie, 1994.

[62] CCJS, 1993a:25-26.

[63] Young and Brown, 1993:41.

[64] Angus Reid, 1994a; 1994b.

[65] Angus Reid, 1994b.

[66] op cite 56.

[67] Department of Indian Affairs and Northern Development, 1994:89-91.

Income levels of registered Indians both on and off-reserve are also lower in the three Prairie provinces than elsewhere in the country. Saskatchewan, Manitoba and Alberta have the highest levels of aboriginal involvement in the criminal justice system. The demographics and conditions of reserves in the Prairie provinces may explain higher levels of provincial and federal aboriginal incarceration.

Community corrections data reveal that the provinces with the most disproportionate levels of aboriginal imprisonment, Saskatchewan and Alberta, also have among the lowest probation intakes (lower probation counts in Saskatchewan may be the result of more intensive supervision and shorter periods on probation). Lower probation intakes suggest either increased use of imprisonment and/or of fines. Rates of sentenced admissions per 1,000 adults charged is considerably higher in Alberta than in Saskatchewan. This suggests greater use of imprisonment in Alberta, a finding consistent with the inner city research.[68] On the other hand, median sentences lengths are shorter in Alberta than in Saskatchewan.

Greater use of fines in Saskatchewan could inadvertently result in higher imprisonment for aboriginal fine defaulters because of the large numbers of marginalized aboriginal people in urban centres where vulnerability to involvement in the criminal justice system is greatest. Repetitiveness of offending and ineligibility for fine option programs (because of past failures), indicates a hard-core group who comprise the "revolving door" in provincial correctional institutions. This group may be highly represented in carceral admissions for fine default and administrative offences because they have as much difficulty meeting conditions of probation as paying fines. Interestingly, more bench warrants were issued by Saskatchewan courts than the other five jurisdictions in 1993-94.

Quebec has the highest fine default admissions but the lowest aboriginal incarceration in the country. This may be explained by the fact that in Quebec fine defaults are used only for municipal offences. Aboriginal communities have their own band by-laws and it is unlikely that fine default warrants would be executed. In addition, there is not large, hard-core, marginalized aboriginal population in any urban centre in Quebec. The inner city research revealed that of the four inner cities, the aboriginal group in Montreal was the least entrenched and most people returned to their home community after short periods in the city. The opposite was true for Alberta and Saskatchewan.[69] Quebec also makes greater use of alternative measures as evidenced by low levels of youth in detention.

[68] LaPrairie, 1994.

[69] ibid.

Table I.1 Rates of Criminal Code Incidents for Provinces and Territories, 1993
(per 100,000 population)

PROVINCE/ TERRITORY	TOTAL CRIMINAL CODE	VIOLENT	PROPERTY	OTHER CRIMINAL CODE
CANADA	9516	1079	5562	2875
BRITISH COLUMBIA	14575	1527	8601	4446
ALBERTA	10681	1151	6273	3257
SASKATCHEWAN	10937	1224	5960	3753
MANITOBA	11753	1619	6216	3918
ONTARIO	8978	1046	5169	2763
QUEBEC	7336	744	4830	1762
NEW BRUNSWICK	7299	965	3564	2770
NOVA SCOTIA	8690	1070	4358	3262
PRINCE EDWARD ISLAND	8138	740	3982	3416
NEWFOUNDLAND	5711	1160	2633	1919
NORTHWEST TERRITORIES	26765	5528	8057	13180
YUKON	19463	2706	8566	8191

(Source: Canadian Criminal Justice Statistics, Canadian Crime Statistics 1993, Statistics Canada, 1994.)

Table I.2 % Incidents Charged, 1993

PROVINCE/TERRITORY	TYPE OF CRIME			
	VIOLENT	PROPERTY	C.C. TOTAL	ALL INCIDENTS
CANADA	51.5	16.1	23.1	27.4
BRITISH COLUMBIA	40.4	11.2	14.5	16.6
ALBERTA	52.4	19.5	27.2	30.7
SASKATCHEWAN	57.0	23.7	34.0	39.9
MANITOBA	66.8	17.9	27.1	31.1
ONTARIO	53.3	16.0	24.0	30.0
QUEBEC	52.8	15.6	23.1	24.8
NEW BRUNSWICK	47.0	20.5	25.5	31.6
NOVA SCOTIA	44.4	19.5	23.7	32.7
PRINCE EDWARD ISLAND	49.9	18.8	20.1	36.5
NEWFOUNDLAND	56.1	34.8	38.5	43.0
NORTHWEST TERRITORIES	54.1	25.1	30.1	25.4
YUKON	51.0	15.9	24.0	25.5

(SOURCE Canadian Crime Statistics 1993, CCJS, Statistic Canada 1994)

Table I.3 Rate of Youth Charged and Daily Count per 10,000 by Provinces and Territories

PROVINCE/TERRITORY	Rate of Youth Charged (10,000 Population)	Average Daily Count of Young Offenders (per 10,000 Population)
CANADA	52.4	22.1
BRITISH COLUMBIA	62.5	13.7
ALBERTA	77.9	28.5
SASKATCHEWAN	97.5	34.3
MANITOBA	95.6	27.8
ONTARIO	49.5	27.9
QUEBEC	26.4	10.1
NEW BRUNSWICK	54.0	31.5
NOVA SCOTIA	55.4	21.3
PRINCE EDWARD ISLAND	64.4	40.8
NEWFOUNDLAND	63.1	23.6
NORTHWEST TERRITORIES	176.4	95.1
YUKON	117.8	37.8

(Source: Canadian Centre for Justice Statistics, Young Offender Key Indicator Report 1993, Statistics Canada 1993 Table 1; Canadian Centre for Justice Statistics, Canadian Crime Statistics 1993, Statistics Canada 1994 Table 2)

Table I.4 Sentenced Admissions to Provincial Custody by Adults Charged (per 10,000) by Province or Territory

PROVINCES/TERRITORIES	Admission Rates by Number of Adults Charged in 1989-90 (Rate per 10,000)	Admission Rates by Number of Adults Charged in 1993-94 (Rate per 10,000)
CANADA	1391	1580
BRITISH COLUMBIA	1278	1387
ALBERTA	2256	2369
SASKATCHEWAN	1401	1607
MANITOBA	1098	917
ONTARIO	1256	1365
QUEBEC	1485	1868
NEW BRUNSWICK	1587	1976
NOVA SCOTIA	555	911
PRINCE EDWARD ISLAND	2863	2013
NEWFOUNDLAND	958	1686
NORTHWEST TERRITORIES	1098	1198
YUKON	1296	1823

(Source: Canadian Centre for Justice Statistics, Adult Correctional Services in Canada, Statistics Canada 1994)

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Table I.5 Type of Offense By Region for Federal Admissions

TYPE OF OFFENCE	REGION				
	ATLANTIC (%)	QUEBEC (%)	ONTARIO (%)	PRAIRIE (%)	PACIFIC (%)
MURDER	27	15	16	17	16
SCHEDULE 1	58	61	59	65	61
SCHEDULE 2	12	22	16	12	10
NON-SCHEDULE	10	12	15	11	21
TOTAL	**2253**	**6552**	**5832**	**4742**	**2888**

Offenders may fall into more than one category.

(CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

Table I.6 On and Off Reserve Registered Indians and Metis by Labor Force Participation for All Provinces 1991 Census (15+ years of age)

PROVINCE	On Reserve Registered Indians (%)	Off Reserve Registered Indians (%)	Metis (%)
BRITISH COLUMBIA	55.3	61.8	65.4
ALBERTA	45.3	59.5	58.5
SASKATCHEWAN	37.5	42.7	55.0
MANITOBA	42.0	47.5	54.5
ONTARIO	50.3	63.0	68.7
QUEBEC	45.2	56.9	63.5
NEW BRUNSWICK & PRINCE EDWARD ISLAND	46.4	64.3	-
NOVA SCOTIA & NEWFOUNDLAND	40.7	62.3	63.5

(SOURCE: 1991 Census INAC Basic Department Date 1994)

PART II. WHO GOES TO PRISON?

PART II: WHO GOES TO PRISON?

> ..... *while jails do detain so-called hardened inmates, they also contain a mixture of the following 'types', innocent people, petty criminals, mentally retarded, alcoholics, the poor and destitute, young offenders, first offenders, short-term offenders....It is evident that prisons are acting as catch basins catching the victims who fall through the cracks in the social welfare system (quoted in McMahon, 1992:89-90).*[1]

In her research on suicide in prisons in the U.K., Liebling (1995:81) concluded that large groups among the prison population share those characteristics associated with increased suicide risk in the community. These include adverse life conditions, negative interpersonal relationships, social and economic disadvantage, alcohol and drug addiction, contact with criminal justice agencies, poor educational and employment history, low self-esteem, poor problem-solving ability, and low motivational drive.[2] The de-institutionalization movement in mental health has also resulted in the imprisonment of mentally ill people in correctional institutions.[3] In studying the characteristics of 110 inmates in a maximum security provincial institution, Vitelli (1995) found that nearly 40% were homeless and there were significant differences between the homeless and non-homeless inmates, mainly related to mental health and previous use of mental health services.

Austin and Irwin have argued that incarceration has been seriously misused in the United States, largely being applied to non-violent, "petty" offenders.[4] About 37% of admissions were for property crimes such as burglary larceny-theft, and fraud. Another 25% was for drug offences like trafficking and possession.[5] In Australia, between 1981 and 1991, prison composition portrayed

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[1] There is evidence from a number of quarters that institutions built for one purpose often serve another. For example, a document written in the 1960's about the characteristics of aboriginal children in some residential schools, revealed that 60% of the children were admitted for child welfare rather than educational purposes (Caldwell, 1967).

[2] A recent paper by a Cambridge economist linking crime and unemployment, argues that evidence from 41 police forces in England and Wales in 1992 confirms the strong association between property crime and unemployment. It also cites the Cambridge Institute of Criminology's longitudinal survey of 400 predominately white inner city males which concluded that "if we are going to be tough on crime and tough on the causes of crime, then we have to come down hard on two of the very well-documented causes of crime: unemployment and poverty" (NARCO, 1995:21).

[3] Despite a lack of Canadian data, Milestone (1995:13) argues that figures from the U.S. are informative. A recent study in that country revealed that between one-third and one-half of all psychiatric patients have been arrested, and another study revealed that approximately 30,000 seriously mentally ill individuals are awaiting charge, trial, and psychiatric assessment.

[4] see Irwin, 1985; Austin & Irwin, 1990; Irwin & Austin, 1994.

[5] see Bureau of Justice Statistics, 1991.

slightly different characteristics with a little more than 40% of prisoners being incarcerated for violent offences and about one-third for property offences.[6]

Accompanying the change in the legal composition of prison populations in the U.S. is a change in racial composition with blacks being more frequently incarcerated than whites at a rate of six or seven black offenders for every white offender.[7] Black American males are now incarcerated at a rate of five times more than black males in South Africa.[8] The disproportional representation of the black population within the prison system is not specific to the United States. As Tonry (1994a) reports, these incarceration patterns resemble those of other modern English-speaking countries. In Australia, Canada and England and Wales, members of minority groups are seven to sixteen times more likely than whites to be imprisoned.

Two explanations which also have relevance for Canada are generally offered for this gross disproportion: blacks and aboriginal people actually commit more imprisonable crimes or the criminal justice system is racially discriminatory. The literature suggests that there is relatively little empirical evidence indicating racial discrimination once arrests have been made.[9] This is not to say, as Blumstein (1993) cautions, that discrimination does not exist because there is ample anecdotal evidence and specific analyses to indicate otherwise. Nonetheless, it appears, empirically, that the bulk of the disproportionality is due to the differential involvement of blacks in crimes which are most likely to result in imprisonment such as homicide and robbery.

Considering the socio-economic inequities and disadvantages experienced by black Americans[10] and aboriginal Canadians, especially among the underclass where black and aboriginal offenders and prisoners disproportionately emanate,[11] their over-representation in criminal activities should not be surprising. The picture, however, is more complex. While blacks and aboriginal people may participate in more of certain types of crimes, the law itself and its application may produce systemic discrimination. While it is generally realized that the "war on drugs" had little impact on the prevalence of illicit drug activity the campaign has been identified as a leading determinant of racial disproportionality in prisons.[12] The "war" as it was fought seemed to be waged primarily against blacks even though it may not have been the conscious intent of law and policy-makers and criminal justice agents. Compared to whites, blacks are more vulnerable to arrest due to the greater police presence in crime-filled black communities, the greater visibility of the street drug trade in which blacks are more likely to be involved and police stereotypes often implicit in profiles of drug couriers.[13] In short, there is a growing body of research that examines racial disparity in prisons by moving beyond basic, conventional discriminatory behaviour to more

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[6] Australian Institute of Criminology, 1992.

[7] Tonry, 1994a.

[8] Mauer, 1992.

[9] Tonry, 1994a.

[10] see Jaynes & Williams, 1990.

[11] Tonry, 1994b.

[12] Mauer, 1992; Blumstein, 1993.

[13] Blumstein, 1993.

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subtle, systemic and institutional practices that seem neutral but in fact differentially affect certain minority populations.[14]

The United States has also experienced an increase in the number of female offenders within the prison system. An increase in female representation within the incarcerated population is also occurring in Australia,[15] Canada and all of the member states of the Council of Europe with the exception of Austria and Italy whose female trends are stable.[16] Nonetheless, women are still markedly underrepresented within the imprisoned population comprising generally between 3% and 7% of the total prison population.[17]

Compared to men, women generally tend to be incarcerated for economic crimes such has theft and fraud.[18] In addition, although they are less likely to be committed for violent offences than are males,[19] a substantial proportion of violent offenders still exists within the female prison population. A 1988 U.S. report estimates that 37% of women are incarcerated for a violent crime such as murder, robbery and aggravated assault.[20] A 1989 Canadian survey administered to a sample of female inmates in federal and provincial inmates reveals that 42% of the population were serving sentences for murder or manslaughter and 27% for robbery and other more minor violent offences.[21] A significant proportion of these violent offenders may be due to the increasing number of reports of women killing their abusive husbands.[22]

As with racial minorities such as black Americans, there seems to be a strong link between female offenders and drugs.[23] Snell (1994) found from her survey of State inmates in 1991 that women are more likely to be serving a sentence for drug offences than men. Even more pronounced are the numbers of female inmates who report some form of substance dependency or abuse. Seventy-one percent of the 1989 Canadian survey reported that substance abuse had played a significant role in their offence or offending history.[24] About three-quarters admitted to having been addicted to alcohol or drugs or involved in drug abuse at some stage in their life. In Australia, 85% of female prisoners have been estimated to have been addicted to drugs.[25]

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[14] e.g., Myers, 1993.

[15] Easteal, 1993.

[16] Tournier & Barre, 1990.

[17] see Tournier & Barre, 1990; Greenfeld & Minor-Harper, 1991.

[18] Dobash, Dobash & Gutteridge, 1986; see National Association, 1992.

[19] see Snell, 1994; Easteal, 1993.

[20] Crawford, 1988.

[21] Shaw, 1991.

[22] see Mann, 1988.

[23] Pollock-Byrne, 1990.

[24] op cite 21.

[25] Willson, 1987.

In a national survey of a representative sample of women prisoners in California, Owen and Bloom (1995) found women in prison were most likely to be black, unemployed at the time of arrest, and 43% reported previous physical or sexual abuse. Violent offenders were most likely to have experienced this abuse. Three-quarters were mothers and the majority had their children when 18 or under. More than half reported that the most important persons in their lives were their children. Most children were under the care of inmate's mothers or grandmothers. They had little employment of work experience and problems of substance abuse. The researchers concluded that "Imprisoned women tend to be marginalized women".[26]

Consistent with their general disproportionality, minority groups also tend to be over-represented within the female prison population. In Crawford's (1988) study, 36% and 15% of female inmates were black and Hispanic, respectively. In 1991, female state inmates were most likely to be black American, accounting for 46% of the female inmate population.[27] Shaw's (1991) sample of incarcerated women in Canada reveals that 23% were of aboriginal origin and 21% were French-speaking. In Australia, the increasing numbers of non-English-speaking minority women born overseas accounted for over 50% of the women imprisoned.[28] It is important to address the needs of these women as it is often the case that many of the problems associated with female inmates in general, are magnified for minority women. For example, as mentioned earlier, women's greatest concern appears to be their relationship with their children. But for aboriginal women, who tend to have more children, the problems and anxiety may be compounded.[29] The magnification of these problems coupled with discrimination and prejudice suggest that prison life for minority female inmates is especially difficult and quite different in many ways from the experiences of the majority of female inmates.

In the final analysis regarding who goes to prison, it is important to remember that a much greater proportion of the aboriginal than the non-aboriginal population in Canada falls into the social and economically marginalized category and are, therefore, more likely to be involved in the criminal justice and correctional systems to a degree which reflects this. How this situation has come about is the subject of Part IV.

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[26] Owen and Bloom, 1995:181.

[27] Snell, 1994.

[28] Easteal, 1993.

[29] op cite 21.

PART III. ABORIGINAL OFFENDERS, OFFENDING AND IMPRISONMENT

PART III. ABORIGINAL OFFENDERS, OFFENDING AND IMPRISONMENT

1. The Incidence of Aboriginal Imprisonment

The reality for certain groups of aboriginal[1] people in Canada and elsewhere is that the historical context may differ but the end result, in terms of over-involvement in the criminal justice system, is broadly the same. Aboriginal people have the highest arrest, incarceration and crime rates of any group in Canada. Similar findings exist in Australia.[2]

Aboriginal criminal justice literature in Canada and elsewhere has traditionally relied on documenting and explaining the phenomenon of aboriginal over-representation.[3] Simply put, this means that aboriginal people are incarcerated at levels higher than their proportion in the general population would indicate. Overall, 17% of persons incarcerated and 12% on probation in Canada in 1993 were aboriginal, even though only 3.7% of the population reported aboriginal origins in the 1991 Census (CCJS, 1995b). In federal correctional institutions in Canada, aboriginal offenders comprise anywhere from 10-13% of the inmate population. In some provincial institutions (particularly those in the Prairie provinces), the disproportionality is much greater (*Table III.1 Aboriginal Admissions to Federal and Provincial/Territorial Institutions & Probation Intakes, 1989-1994*). See page 42 for tables.

Federal

On July 2, 1995, aboriginal offenders (Inuit, Metis and North American Indian) comprised 11.2% (2,483) of the total offender population.[4] Of these, 68% were in the Prairie region and within this region, aboriginal offenders comprised 35% of the offender population. Quebec region has the lowest level of aboriginal inmates (*Figure III.1 % Aboriginal and Non-Aboriginal by Region, 1995*). More aboriginal than non-aboriginal offenders were incarcerated than on community supervision even when controlling for type of offence but without information about number and type of prior offences (*Table III.2 Correctional Status by Aboriginal and Non-Aboriginal Offenders and Type of Offence, 1995*). The incarceration/population level disparity is much lower in the federal than in the provincial institutions.

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[1] The term used in this report is most commonly "Aboriginal". However, where specific research is cited the term used in the research to denote aboriginal people research is replicated here.

[2] see Jackson, 1989, and Broadhurst, 1996, respectively.

[3] In Australia, aboriginal people are 15 times more likely to be in prison, but only 8.3 times more likely to be serving non-custodial correctional orders (Lincoln and Wilson, 1994:65)). However, Broadhurst's (1996) research examining receivals and distinct persons (sentenced admissions and counts in Canadian terms) from 1990-1993 in Australia, showed decreases for aboriginal people and increases for non-aboriginal people in both categories. In Canada, there would appear to be increases for both aboriginal in admissions and in daily counts. What is not known in Canada is whether there has been a decrease in the proportion of aboriginal people who are convicted and sent to prison.

[4] The federal data were supplied by Accountability and Performance Measurement Sector, CSC.

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In federal corrections, females comprise 2.7% of all offenders but aboriginal women comprise 11.2% of the total female population - a vast over-representation in relation to their proportion in the general population.[5] However, 73% of the aboriginal female offenders are incarcerated rather than under community supervision as compared to 49% of the non-aboriginal group. Of the total aboriginal federally sentenced population, 68.8% are in the Prairie Region and 16.4% in Ontario.

Provincial/Territorial

Aboriginal people in Saskatchewan and Alberta are at greatest risk, and in Quebec and Nova Scotia at least risk of imprisonment. CCJS data for 1989-1994 show provincial and territorial sentenced admissions of aboriginal people to be most disproportionate in the provinces of Saskatchewan, Alberta and Manitoba, and least disproportionate in Quebec, N.W.T., and Nova Scotia and Ontario. In Saskatchewan, admissions are approximately 6.8 times higher than would be expected from the provincial aboriginal population. In Alberta and Manitoba the comparable rates are 5.5 and 4.9 times, respectively. However, in Quebec there is no such disproportionality and in the N.W.T. it is 1.5 times, and in Nova Scotia and Ontario, 2 times higher.[6] The remand admissions for the five jurisdictions for which data were provided show similar proportions, ranging from roughly 7.0 times higher in Saskatchewan, to 2.0 times higher in Ontario.

Findings from the five provinces from which correctional data were requested (B.C., Alberta, Saskatchewan, Manitoba and Ontario), reveals that between 1988-1995 (1993-95 for Saskatchewan), an average of 17% of sentenced admissions to B.C. institutions were aboriginal, as compared to 31% in Alberta, 73% in Saskatchewan, 57% in Manitoba, and 7% in Ontario. For remand admissions the findings are as follows: 16% in B.C., 29% in Alberta, 70% in Saskatchewan, 55% in Manitoba and 6% in Ontario. For both aboriginal and non-aboriginal offenders, Saskatchewan had the highest number of offences per offender for the three jurisdictions that provided data.

When examining rates of sentenced admissions per 10,000 persons in the general population in the five provinces, Alberta is found to have the highest rate of admissions overall (*Table III.3 Sentenced Admission Rates per 10,000 Population - Aboriginal and Non-Aboriginal*). However, the aboriginal-non-aboriginal ratio of sentenced admissions is nearly 25 times higher for aboriginal people in Saskatchewan, 9.7 times higher in Manitoba, and 7.2 times in Alberta. The aboriginal-non-aboriginal ratio is considerably less in B.C. and Ontario (*Table III.4a Ratio of Aboriginal and Non-Aboriginal Sentenced Admissions; Table 4b % Remand & Sentenced Admissions, and Total Aboriginal Population*).

In 1991, nearly half the women admitted to provincial correctional institutions in Canada were aboriginal. The greatest concentrations were in Alberta, Saskatchewan, Manitoba and Ontario. In Ontario in 1991-92, aboriginal women comprised 13% of the women sampled in institutions and under community supervision.[7]

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[5] York, 1995:3.

[6] CCJS, 1994a. The rates were calculated using CCJS sentenced admission and 1991 aboriginal census data.

[7] see Johnson and Rodgers, 1993; Shaw, 1994.

Data from the five provinces reveal that aboriginal women are disproportionately represented in sentenced admissions in comparison to non-aboriginal women in all five provinces, but particularly so in Saskatchewan. For remand admissions, aboriginal females are again over-represented in all provinces except Ontario, where the aboriginal/non-aboriginal levels are similar. Interestingly, Saskatchewan has the lowest levels of females on remand and unlike the other provinces where the levels were similar to sentenced admissions, remand levels for females in Saskatchewan were much lower.

Fine defaults:

In all five provinces proportionately more aboriginal than non-aboriginal offenders are serving time for fine defaults. Between 1988-95 custody, Saskatchewan had the most aboriginal (38%) and non-aboriginal (31%) fine default sentenced admissions, and B.C. the fewest, where the comparable percentages were 19% and 18%. Over the same period, incarceration for fine defaults has fallen sharply for aboriginal offenders in Ontario - from 60% to 14%, and risen slightly from 5% to 8% for non-aboriginal offenders. In Ontario, however, more aboriginal than non-aboriginal females are serving time for fine defaults.

Two provinces - Saskatchewan and Ontario - provided information about the type of offences for which offenders were admitted on fine defaults. In Saskatchewan more aboriginal offenders were admitted for administration, and more non-aboriginal for provincial and driving offences. In Ontario, more aboriginal offenders were admitted for person and more non-aboriginal for drug offences. In both provinces, property, driving and administration of justice offences were most common but, in Saskatchewan, the highest offence category was provincial offences. Alberta had more admissions for person offences.

Bail Supervision:

Bail supervision data are available only for B.C. The data show little difference in age groups between aboriginal and non-aboriginal offenders on bail supervision, but more aboriginal than non-aboriginal females. There are few differences in the offences for which offenders receive bail supervision, with person and property most common for both groups. Somewhat more non-aboriginal people receive bail supervision for drug and public order, and aboriginal for weapons offences. However, the greatest difference is the days under supervision, with aboriginal offenders showing considerably more days. For example, from 1992-1995, an average of 21% of aboriginal people spent six months to one year on bail supervision as compared to 8% of the non-aboriginal group. Similarly, 6% of aboriginal as compared to 1% of non-aboriginal people spent one year or more on bail supervision. This may be explained, in part, by the finding that a considerably larger proportion of the aboriginal group had previous jail sentences and contact with the criminal justice system.

2. Characteristics of the Aboriginal Inmate

There are characteristics that aboriginal offenders share in common with non-aboriginal offenders and there are those that differ. The attitudes, peer group support, and personality factors that

promote the commission of crime are similar and are shaped by family background, poverty, school experiences, exposure to violence, and isolation from opportunities, options and other factors that shape pro-social attitudes. The factors that distinguish aboriginal from non-aboriginal offenders are differences in degree of background and geographic factors, and the fact that they have a different cultural experience. However, culture, geography and exposure to mainstream society, also distinguish aboriginal offenders themselves.[8]

Findings from the U.S. are consistent with those in Canada. In charting characteristics of Native American inmates in the U.S., Grobsmith (1989) found that roughly a third were from reservations, a third were urban, and a third moved back and forth between the two. Individuals were generally arrested at age 14 and had an average of 18 prior arrests before coming to prison. They had an average of 1.2 incarcerations per year and had been detained in county jails an average of 3.9 times apiece. In interviews, informants stated that with few exceptions, drinking preceded involvement in criminal activity. Nearly 90% of the sample reported a family member also having a prison record. Virtually, every person reported a chemical dependency problem and two-thirds reported that their parents drank to excess. The average age of beginning alcohol and/or drug use (usually inhalants) was 11.6. Most inmates had unstable family backgrounds and only one-quarter were raised by parents. Inmates indicated they frequently were abused by foster and step-parents and to a lesser extent by biological parents, a finding consistent with the Canadian inner city data.[9]

In exploring the characteristics of an aboriginal and non-aboriginal sample of incarcerated offenders in Manitoba institutions, McCaskill (1970, 1985) found the aboriginal group to be less educated, more dysfunctional and from more aberrant family backgrounds than the non-aboriginal group. Aboriginal offenders in Alberta in the years 1988-1995, were lower on education and employment levels than were non-aboriginal offenders, and the Status Indian group was even lower than the non-Status/Metis group.

In federal institutions, aboriginal inmates are on average 3.4 years younger than the non-aboriginal offenders.[10] This is true as well in B.C., Saskatchewan, Manitoba and Ontario sentenced admissions, where more of the non-aboriginal group is 30 years of age or older. However, the aboriginal remand population is generally younger in age than the group on sentenced admissions, and this is especially true in B.C. and Saskatchewan. The age differences are most extreme in Manitoba where a much larger group of non-aboriginal people are 30 or older.

Aboriginal inmates are disproportionately represented in parole detention referrals because of their difficulty controlling violent impulses combined with substance abuse problems.[11] Alcohol abuse has been identified as a major characteristic of aboriginal offenders in virtually every

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[8] see LaPrairie, 1994; Planning Branch, 1975; McCaskill, 1970, 1985; Waldram, 1992; Comack, 1993; Birkenmeyer & Jolly, 1981.

[9] LaPrairie, 1994.

[10] op cite 3.

[11] see Correctional Services Canada & National Parole Board, 1995.

study.[12] Research examining federal aboriginal and non-aboriginal offenders has generally found the aboriginal group to be less educated, more dysfunctional and from more troubled family backgrounds than the non-aboriginal group.

The 142 correctional personnel surveyed in the present research reported that the main similarities between aboriginal and non-aboriginal offenders are: drug and alcohol addiction, poor upbringing/poverty, abuse and violence in lives, type of offences committed, and lack of education. The main differences between aboriginal and non-aboriginal offenders were cultural (including shyness), degree of family and personal problems (such as addictions to alcohol) and entrenchment in poverty. Differences among aboriginal offenders were cultural (language, beliefs, groupings) as well as family background and geographic, i.e., some respondents said urban and southern offenders have an easier time in institutions than do northern, more remote-living aboriginal people.

When considering characteristics of aboriginal offenders it is important to remember how similar these are to the characteristics of the majority of people who go to prison, as described in Part II. The tendency is often to see aboriginal offenders as uniquely different from all other offenders. For treatment and programming purposes, however, it is important to remember that the similarities between groups of offenders may be greater than the differences.

Aboriginal Females

Both Shaw (1994) and Birkenmeyer and Jolly (1981) found alcohol abuse, unemployment and poor living conditions associated with arrest and incarceration of aboriginal women in Ontario. The vast majority had dependents but no steady employment and considerable prior involvement with the criminal justice system. Shaw (1994) found that native women reported more physical abuse in their lives than non-native women, but there were no reported differences for sexual abuse between the two groups. Native women also reported more suicide attempts and incidents of slashing themselves.

Comack (1993) in an examination of women housed at the portage Correctional Institution in Manitoba, documented the particularly marginalized positions of incarcerated aboriginal females. She found aboriginal offenders to be lower than their non-aboriginal counterparts on a number of socio-economic indicators including education and employment , to be in the criminal justice system at a younger age, and to have had more abusive relationships. She observed that "women who have been subject to physical abuse will be more inclined to use physical violence themselves, and — women may be more likely to internalize their abuse experiences, and, as a result, turn to alcohol and drugs as a means of coping" (1993:44).

The Report of the Task Force on Federally Sentenced Women (1990), found that 69% of individuals interviewed described experiences of childhood violence, rape, regular sexual abuse, the witnessing of a murder, watching their mothers repeatedly beaten. In addition, most had also been adult victims of violence. Nearly 90% had alcohol and/or drug problems (1990:53). The

[12] see Doob *et al*, 1994; Irvine 1978; Moyer, 1992; Planning Branch, 1975.

characteristics of this group are little different to the women surveyed by Owen and Bloom (1995) in California institutions. Both groups fall into the "marginalized" category.

Cultural and Structural Variation Among Aboriginal Offenders

There has been a tendency to treat aboriginal offenders as a homogenous group, even though we have moved away from this view for the general aboriginal population where a recognition of differences is now an accepted part of the discourse. Within the correctional setting, however, programming has made certain assumptions about the needs of aboriginal inmates and concluded that the most appropriate emphasis should be on culture and spirituality. Some research suggests, however, that more attention to differences among aboriginal offenders is warranted. There are two areas, not necessarily mutually exclusive, which may best distinguish aboriginal inmates – the degree and nature of involvement in crime, and the structural and cultural contexts of their lives. These are discussed below.

When culturally profiling aboriginal inmates for purposes of designing treatment plans, Waldram (1992) found three distinct groups among thirty randomly selected aboriginal inmates. He identified these groups as "traditional", "bi-cultural" and "assimilated". The groups differed with respect to language, home community, time spent on reserve, experience in Euro-Canadian society, exposure to traditional beliefs and practices, exposure to urban settings, mobility in younger years, aboriginal self-identity etc.. Waldram describes Group 1, the Traditionalists, as "culturally "Aboriginal" by their continuing use of an Aboriginal language and extensive and even life-long enculturation in predominately Aboriginal communities"; Group 2, the Bi-culturalists, are "in cultural terms, primarily "Aboriginal but are well-versed in Euro-Canadian ways"; Group 3, the Assimilationists, are "primarily Euro-Canadian, even Anglo in orientation. They are essentially unicultural, with virtually no knowledge of an Aboriginal culture or language".[13]

Groups 1 and 2 have a strong identification with a reserve or a predominately aboriginal community, with extended family networks. They had extensive exposure to aboriginal culture and spirituality during their formative years. Group 3, on the other hand, often lived in adopted or foster families in urban areas with little exposure to aboriginal culture. Aboriginal self-identity is most assured for Group 1, less so for Group 2, and often absent in Group 3. Exposure to racism also differs, with Groups 2 and 3 most subjected to discrimination during their formative years because of their contact with non-aboriginal society. Interestingly, while Group 3 experienced disrupted family lives, they had not experienced the pathological conditions found in many aboriginal communities, and thus experienced less personal violence and abuse. Nearly three-quarters of Waldram's sample fell into Groups 1 and 2.

The relationship between socio-economic levels and involvement in the criminal justice system was also demonstrated in the inner city research, where the sample was divided into Inner 1, Inner 2 and Outer groups.[14] Inner 1 were the most marginalized and disadvantaged. They were mainly

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[13] Waldram, 1992:16-18.

[14] see LaPrairie, 1994. One of the most interesting aspects of this distinction is that it breaks down sub-categories of "lower" class. This suggests a problem with using variables such as lower class in research predicting criminal

males with hard-core alcohol problems, the least educated, employed and employable, most victimized as children, most involved in the criminal justice system and involved at the earliest age. They had been in custody more often and for longer periods of time, and were marginalized in both aboriginal and non-aboriginal society.

The second group, Inner 2, had more stable upbringings than Inner 1, but still revealed a pattern of childhood deprivation, disadvantage and violence. Inner 2 males had considerable contact with the criminal justice system but less so than Inner 1. As a group, they abused alcohol less frequently. Being somewhat younger and better educated, they were less passive in their contacts with police and authority figures. They, more than Inner 1, were looking to aboriginal culture for solutions to their problems, even though they were not strongly tied to reserves.

The third group, Outer, had more females than males, and were generally more advantaged than Inner 1 and 2, as measured by socio-economic and education indicators and degree of involvement in systems of social control. It was the best educated group and had the highest proportion of people employed but was still far below the Canadian, or general aboriginal population levels. This group was most connected to reserves and families and its members had more stable childhood's.

It is also essential to distinguish other differences among aboriginal offenders. Offenders with chronic alcohol and lifestyle problems may require a different response. A concentration on cultural responses may mask other needs of aboriginal offenders, or over-emphasize the needs of one group to the exclusion of others. Many non-aboriginal offenders are also alienated from society and "failed" by the criminal justice system because of their socio-economic and other circumstances.

There is a body of literature which suggests aboriginal offenders are major contributors to the "revolving door" syndrome and, in some parts of the country, may be admitted to a correctional institution several times a year.[15] The group which contributes most heavily to this are chronic offenders with serious alcohol problems and over-represented in fine default, administration of justice, minor person, property, and other minor offences. They may be victims one day and offenders the next. Their life-style is a major contributor to involvement in the correctional system. Offending is only one in a constellation of behaviours that are part of an alcohol and life-style syndrome; being labeled an offender does not reflect the reality of their lives.[16] For the most minor offences, this group is responded to as a criminal justice rather than as a health or social problem.

Other aboriginal offenders, by contrast, are younger, more sophisticated in their offences and politicized in their orientation (especially when incarcerated), and less trapped in alcohol addiction

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conduct. Understanding the degree of marginalization within the lower class category may be a more useful direction to pursue than the broad class category in predicting criminal conduct and treatment for aboriginal offenders.

[15] Birkenmeyer & Jolly, 1981; Muirhead, 1982; LaPrairie, 1994.

[16] Birkenmeyer, in conversation, 1995.

and the accompanying life-style. There are also offenders who have committed only one type of offence, such as sexual assault, have no prior offence history, and are neither in the revolving door nor an urban lifestyle. Their offences are specific and the response of the criminal justice system is related directly to the offence.

3. Aboriginal Offences

The type of offences in which aboriginal people are involved is not surprising given their personal and background characteristics, and the social and economic contexts in which they live. Community-based and correctional research into aboriginal offending patterns over the past few years have consistently documented the disproportionality of person offences.[17] The Canadian Centre for Justice Statistics (1989) reported that aboriginal people make up 2.8% of Canada's population but constituted 22.2% of Canada's homicide suspects, and 17.6% of its victims.[18] At the less serious end of the scale, fine default, administrative (fail to appear, breaches of probation) and public disorder offences, are also related to the over-representation of aboriginal people in the criminal justice and correctional systems.

Aboriginal offenders in federal institutions are more likely than non-aboriginal offenders to be incarcerated for offences against the person. In a parole decision-making and release risk project, Hann and Harman, (1992) discovered the most likely admitting offence for non-aboriginals was property; by contrast, the most likely admitting offence for the aboriginal group was against the person, and break and enter. More recent incarceration data reveal that aboriginal males and females are still disproportionately incarcerated for offences against the person, and non-aboriginal for more drug and property offences. One of the differences between aboriginal and non-aboriginal offenders as reported by correctional personnel surveyed, was the seriousness of offences committed. Aboriginal offenders are also serving more sentences - all aboriginal offenders serving their sixth to eighth sentence in the federal system (N=11) are located in the Prairie region.[19]

On July 2, 1995, more aboriginal than non-aboriginal offenders in federal institutions were incarcerated for Schedule 1 offences - 80% (N=1979) as compared to 63% (N=12,510).[20] Keeping in mind that offence types are not mutually exclusive (offenders can be in more than one category), the top five offences for aboriginal offenders were:

1) assault causing injury
2) robbery
3) 2nd degree murder

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[17] LaPrairie, 1992; Auger *et al*, 1993; Moyer *et al*, 1985; Hann and Harman, 1992.

[18] Doob *et al*, 1994:30.

[19] York, 1995:10.

[20] ibid: iii.

4) manslaughter

5) sexual assault

For non-aboriginal offenders the top five offences were:

1) robbery

2) assault causing injury

3) trafficking

4) 2nd degree murder

5) firearms offences

These offences are shown in *Figure III.2 General Offence Type for Aboriginal and Non-Aboriginal Offenders, 1995* and *Table III.5 - Specific Offence Type for Aboriginal and Non-Aboriginal Offenders, 1995.*

Table III.6 Type of Offence by Region for Aboriginal and Non-Aboriginal Offenders, 1995 reveals that aboriginal offenders are over-represented in manslaughter and assault causing bodily harm offences particularly in the Prairie, Atlantic and Quebec regions. Non-aboriginal offenders commit more firearms, trafficking, and other drug related offences. Non-aboriginal offenders are also slightly over-represented in 1st degree murder and attempt murder offences but this does not hold in all regions. Aboriginal offenders are over-represented in manslaughter and assault causing bodily harm offences in both institutional and community supervision settings (*Table III.7 Specific Offence Type for Aboriginal and Non-Aboriginal Offenders - Institution and Community Supervision, 1995*).

Aboriginal sex offenders comprise 17% of all sex offenders in federal institutions, and 28% of all aboriginal offenders are in for sex offences. Aboriginal offenders are somewhat over-represented in the sex offender category[21] (they comprise 11% of the offender population) but not in the dangerous offender category, where only 11.8% of dangerous offenders were aboriginal .[22]

Sentenced admission data from the five provincial jurisdictions for 1988-1995 revealed that the most common Criminal Code offences for aboriginal offenders were driving-related in B.C., property in Alberta and Ontario, administration of justice[23] in Saskatchewan, and person in Manitoba. These were the same for non-aboriginal offenders except in Saskatchewan and Manitoba where property offences were higher. Sentenced admissions for provincial statutes were higher for both aboriginal and non-aboriginal offenders in Alberta than elsewhere. Non-aboriginal offenders are incarcerated for more property, drug and driving offences, and aboriginal offenders

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[21] A study of northern aboriginal offenders in federal institutions found a preponderance of violent offences and over one-half had at least one previous conviction for sexual offences (Johnstone, 1995).

[22] Accountability and Performance Measurement Sector, CSC, July 2, 1995.

[23] Most commonly these include breach of probation and other breaches, as well as fail to appear, comply offences but there is variation by province - see Appendix I - Five Provinces Methodology

for more person and administration offences, except in Ontario where aboriginal and non-aboriginal offences are similar.

The most common remand admission Criminal Code offences from 1988-1995 for the aboriginal group in Saskatchewan are administration, and in B.C., Manitoba and Ontario, person offences.[24] In all provinces, more aboriginal than non-aboriginal people were on remand for person offences. For the non-aboriginal group, the most common offences are administration in B.C. and Saskatchewan, person offences in Manitoba, and person and property offences in Ontario. This means that, except for Saskatchewan, the most common remand offence was person.

Aboriginal Females

There is some variation in the offences for which aboriginal and non-aboriginal females are incarcerated. Federal data show aboriginal women to be disproportionately incarcerated for violent offences in comparison to non-aboriginal women. *Table III.8 Specific Offence Type for Aboriginal and Non-Aboriginal Federally Sentenced Females, 1995*, reveals that nearly 77% of the aboriginal group is incarcerated for Schedule 1 offences as compared to 41.2% of the non-aboriginal. By contrast, only 2.0% of the aboriginal group is incarcerated for Schedule 11 offences as compared to 30.9% of the non-aboriginal group.

The main category of offence disporportionality is for manslaughter, with aboriginal females over-represented in this category. For example, on October 22, 1995, 29% of the federally sentenced aboriginal group was serving a sentence for manslaughter as compared to 10% of the non-aboriginal group. In comparing the number of federally sentenced females serving time for one offence only, the figure was 84% of aboriginal as compared to 93% of non-aboriginal offenders. Aboriginal women admitted to federal institutions are more likely than non-aboriginal women to have served a previous federal sentence and more than twice as likely to be incarcerated for crimes of violence.[25]

Alberta and Ontario data from 1992-95, revealed that more aboriginal females in Ontario are incarcerated for property offences, and more non-aboriginal females for drug offences,[26] but property and drug offences are highest for both groups.[27] In Alberta, property offences are much higher for non-aboriginal, and provincial, public order/administration offences for aboriginal offenders. Generally, aboriginal female offenders have more prior offences than non-aboriginal female offenders. This is much more apparent in the Alberta than the Ontario data, a finding

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[24] No remand offence data were requested from Alberta.

[25] Johnson and Rodgers, 1993:111.

[26] There appear to be some changes in type of offences for aboriginal females over the years. For example, in 1981, Birkenmeyer and Jolly found females in Ontario more likely than males to be charged with liquor and less likely to be charged with property offences. They were also more likely to be charged with fine defaults. In later work, Shaw (1994) discovered that the main differences between the native women and the larger sample for the year 1991-92 were the higher numbers of native women charged with minor assaults and drinking offences.

[27] Doob *et al* (1994:43) found that a higher proportion of aboriginal homicide suspects in Ontario in 1988 were female.

consistent with the greater socio-and economic marginalization of aboriginal people in the western provinces, as identified in the Inner City research[28] and Census data.

4. Sentence Lengths

At the federal level, non-aboriginal offenders generally have longer sentence lengths than aboriginal offenders.[29] Recent data show that on July 2, 1995, non-aboriginal offenders had a mean sentence length of 5.2 years as compared to 4.2 years for aboriginal offenders. An examination of sentence length by assaults revealed that whereas 63% of the aboriginal offenders received a sentence of 2-4 years, only 47% of the non-aboriginal offenders received the same sentence. Twenty percent (20%) of non-aboriginal offenders received a sentence length of 10 years or more compared to 11% of the aboriginal offenders even though, overall, aboriginal offenders committed more serious offences. Almost 10% more aboriginal offenders had served a previous sentence but the mean number of sentences served was similar at 1.6 for aboriginal and 1.4 for non-aboriginal offenders.[30]

Comparing sentence length by type of offence for federal offenders (both in institutions and under community supervision) indicates aboriginal offenders are receiving significantly shorter sentences (*Table III.9 Sentence Length for Aboriginal and Non-Aboriginal Offenders, 1995*). These differences hold for the following offences: attempted murder, assault causing injury and robbery. Even though not statistically significant, non-aboriginal offenders are also receiving received longer sentences for trafficking offences[31] (*Type of Offence by Sentence Length for Aboriginal and Non-Aboriginal Offenders, 1995*). Examining variation by regions reveals that aboriginal offenders are receiving significantly shorter sentences in Quebec, Pacific and Prairie regions. The most significant differences for shorter aboriginal sentence lengths are found in the Prairies (*Table III.11 Sentence Length by Region for Aboriginal and Non-Aboriginal Offenders, 1995*).

Data from the five provinces shows that sentences for aboriginal offenders are only marginally shorter than for non-aboriginal offenders. Alberta had the largest difference in sentence length with only 9% of the aboriginal population receiving a sentence of 367+ days as compared to 15% of the non-aboriginal group.[32] For both federal and provincial offences, Alberta has the longest

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[28] op cite 6.

[29] York, 1995; Hann & Harman, 1992.

[30] York, 1995:iii.

[31] Numbers used in this analysis are for offenders with only one Scheduled offence. Those with two or more Scheduled offences or a murder offence are excluded. Only attempt murder, assault causing injury, sexual assault, robbery and trafficking were used for comparative purposes. The offences chosen are those mentioned earlier in the report for aboriginal and non-aboriginal offenders. Firearms offences had insufficient numbers for comparative purposes, and second degree murder involved a life sentence.

[32] The estimated mean sentence length in days for provincial aboriginal offenders in Alberta was 85.4 days, and for non-aboriginal offenders 98.2 days. For aboriginal females, it was 63.9 as compared to 82.0 days for non-aboriginal females. In Saskatchewan the mean number of days for aboriginal offenders was 100.5 and for non-aboriginal offenders 112.7 days; in Ontario it was 83.2 and 83.6 days, respectively.

sentences of the five provinces. In Saskatchewan (followed by B.C.) a higher proportion of all federal and provincial offenders (but particularly of aboriginal offenders) served sentences of less than 30 days and fewest served 367+ days. Variation in sentence length may be attributed, in part, to type of offence committed. For example, in Saskatchewan more aboriginal offenders are serving sentences for administration of justice and provincial offences.[33]

Sentence length by type of offence for aboriginal and non-aboriginal offenders are available only for Alberta and Saskatchewan. In both provinces non-aboriginal offenders receive longer sentences for person, property, administration/public order, and weapon offences. In Alberta, aboriginal offenders receive longer sentences for driving offences, but in Saskatchewan aboriginal offenders do not receive longer sentences in any of the offence categories.

For federally sentenced females, the shorter sentence phenomenon for aboriginal offenders also holds true. *Table III.12 (Mean Sentence Length by Offence Type and Total Offences for Federally Sentenced Aboriginal and Non-Aboriginal Females)* demonstrates that the mean sentence length for aboriginal females is shorter in all offence categories, including total offences. The one exception is Non-Scheduled offences where the aboriginal sentences are somewhat longer - 4.7 years as compared to 4.1 for non-aboriginal females.

For specific offences, the mean sentence length for aboriginal females is generally shorter. For manslaughter the mean length is 5.8 years for aboriginal and 7.3 for non-aboriginal females; for assault causing injury the comparable lengths are 2.8 and 3.2, respectively; for robbery they are 3.0 and 5.1 years.

At the provincial level, Shaw (1994:80) found native women in Ontario to be serving slightly shorter custodial sentences than the main sample group, despite the finding that they had more prior incarcerations. Alberta provincial data from 1992-1995, reveal that aboriginal females received shorter sentences despite having more previous admissions to incarceration and more offences for the present admission. Shorter sentences for the aboriginal group in Alberta may reflect that more aboriginal females are admitted for less serious offences - mainly provincial and public/administration.

5. Use of Community Corrections for Aboriginal Offenders

There are two central issues in relation to Aboriginal people and probation. The first is over-representation of aboriginal people in probation levels; the second is frequency of use of probation for aboriginal offenders.

[33] Remand data for the years 1988-95 are incomplete but the available figures from three provinces reveal that in B.C. and Manitoba aboriginal and non-aboriginal groups spend comparable time on remand, but in Saskatchewan aboriginal people spend longer periods. More offenders in Manitoba than in Saskatchewan or B.C. spend less than 15 days in prison (see Appendix II for tables).

Aboriginal people are also over-represented in probation intakes in comparison to their proportion of the population. This is especially true in the Prairie provinces, followed by B.C., Newfoundland, Ontario, Quebec and the Yukon. It is least disproportionate in Nova Scotia. The number of aboriginal people on probation is higher than those on sentenced admissions to prisons in some provinces (Atlantic provinces), and less than sentenced admissions in others (mainly Alberta and Saskatchewan). This may contribute to disproportionate imprisonment in the latter. If aboriginal people receive fines (which they are unable to pay) more often than probation, they may appear in sentenced admissions. For example, in Saskatchewan in 1993, of those cases resulting in conviction, 23% received probation, 50% fines and 31% prison, which lends some support to this contention.

In 1993-94, almost 13% of all intakes to provincial probation were aboriginal people. The highest numbers were in Manitoba, Saskatchewan, Alberta and the Yukon - jurisdictions with greatest involvement of aboriginal people in the criminal justice system. No N.W.T. data were available. Between 1989 and 1994 there was a 27.5% increase in aboriginal people on probation but there was variation by jurisdiction. All jurisdictions except Nova Scotia, showed steady increases in aboriginal people on probation (there were no data for P.E.I. and New Brunswick).[34] Without controlling for type of offence and prior record, however, it is difficult to draw any conclusions form these findings.

Of the five provinces from which aboriginal and non-aboriginal probation data were requested, only three were able to meet the request - Manitoba, B.C., and Ontario. An analysis of those data revealed that 23% of probationers in B.C. were aboriginal, 17% in Manitoba and 21% in Ontario (in B.C. and Ontario the proportion of aboriginal offenders on probation is higher than the proportion incarcerated but this is not the case in Manitoba). More aboriginal probationers in all three provinces are between 21-29 years of age, whereas more non-aboriginal offenders are 30 years of age or older. More aboriginal than non-aboriginal females were on probation, particularly in B.C.. Person and property offences were the most common offences for which offenders received probation but in Ontario, over eight times as many non-aboriginal as aboriginal offenders received probation for person offences. Probation was used more often for driving and considerably more often for public order offences in B.C. than in Manitoba or Ontario. B.C. also gave much shorter periods of probation (related perhaps to use of probation for public order offences) for both groups, but generally aboriginal offenders in all three provinces received shorter periods of probation. In Ontario, a larger proportion of all offenders received two or more years probation.

Summary

What are we to make of all these conflicting data? On the one hand, offence data reveal that federally sentenced aboriginal offenders are committing more serious offences but at the same time are consistently receiving shorter sentences than non-aboriginal offenders. While the offence

[34] CCJS, Juristat, 15(4):1995a:9-10.

differences between aboriginal and non-aboriginal offenders are less extreme for provincially sentenced offenders, the aboriginal group generally receive shorter sentences which, may be explained in part and in some provinces, by the commission of less serious offences.

On the other hand, federal aboriginal offenders are receiving incarceration more often when controlling for offence type but without information about number and type of prior offences. The rate of incarceration in the aboriginal population is considerably higher than for the non-aboriginal population but the conditions from which aboriginal offenders derive are also more negative and extreme. Although the criminal justice system is unable to solve these problems judges may be taking these conditions into account in sentencing decision-making. Shorter sentences given aboriginal accused would suggest an awareness by judges of the disadvantaged positions of aboriginal offenders, and an attempt to redress the balance. While it may appear to discriminate against the non-aboriginal offender, this may be balanced, in part, by the finding that incarceration is used more often for aboriginal offenders. This may be the result of the lack of structure in the lives of many aboriginal offenders to support a community-based sentence.

The violent offences for which aboriginal offenders are incarcerated in federal institutions and the repetitiveness of their involvement with the criminal justice system from a young age, are vivid reminders of the life circumstances of many (and especially the most marginalized) aboriginal people. Normalization of violence and exposure to most extreme forms of violence, were two of the most important findings of the inner city research.[35] The disproportionate number of aboriginal females serving time in federal institutions for manslaughter is a reflection of these circumstances and of the violence to which many aboriginal women are subjected.

How is incarceration being used for aboriginal offenders across the country and what is the reason for the jurisdictional differences in incarceration levels even when controlling for aboriginal population size?

Socio-demographic profiles as reflected in census and research data reveal that the most marginalized aboriginal populations are in the three Prairie provinces. This suggests that heavy use of sentences such as fines and charges for public order and other administrative offences, will disproportionately and negatively affect aboriginal people in these provinces. Where there are the most marginalized groups there are likely to be more street people, higher alcohol consumption, more visibility to police, and less ability to pay fines or adhere to court orders because of the corresponding lifestyle. Increased off-reserve migration and higher birth rates in these provinces suggest that if sentencing practices do not change, neither will the levels of aboriginal incarceration in provincial institutions. Dealing with the life circumstances and experiences that result in federal sentences, is a much more difficult problem for the criminal justice system to address.

The differences in sentencing admission rates in B.C. and Ontario, in comparison to the Prairie provinces suggest two things. First, there are less marginalized aboriginal groups in those provinces so there are fewer fine default and administration of justice and public order offences;

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[35] LaPrairie, 1994.

and, second, incarceration is not used as extensively for fine defaults and other minor offences The other difference is more use of community corrections for aboriginal offenders in those two provinces. Thus, a policy or practice such as the use of incarceration for fine default and public order and administration of justice offences (including breaches of probation etc.) where there are large numbers of marginalized aboriginal people most vulnerable to committing these offences, may be particularly devastating. This situation is similar to the use of incarceration for certain drug offences in the U.S. which has resulted in the enormous rise in incarceration of black people. The difference in Canada is that incarceration for these offences is not new as it is for some drug offences in the U.S. It has just not changed and, unlike many other countries, Canada continues to rely heavily on carceral sentences even for relatively minor offences for which offenders receive short sentences. For. other provincial and for federally sentenced aboriginal offenders, decarceration solutions are much less obvious, as Part IV may help to illustrate.

Table III.1 Aboriginal Admissions to Federal and Provincial Institution and Probation Intakes by Province 1989 - 1994 (averaged)

PROVINCIAL/ TERRITORIAL	FEDERAL ADMISSION % TOTAL ADMISSIONS	PROVINCIAL % TOTAL ADMISSIONS	PROBATION INTAKE % OF TOTAL INTAKE
BRITISH COLUMBIA	16.2	17.0	15.9
ALBERTA	23.6	33.4	22.9
SASKATCHEWAN	54.8	69.2	58.5
MANITOBA	42.2	48.8	45.6
ONTARIO	3.8	7.4	4.6
QUEBEC	2.6	2.0	4.3
NEW BRUNSWICK	3.6	5.7	-
NOVA SCOTIA	3.2	3.7	3.9
PRINCE EDWARD ISLAND	6.5	3.3	-
NEWFOUNDLAND	6.6	4.0	5.1
NORTHWEST TERRITORIES	89.0	90.3	92.5
YUKON	32.4	62.1	73.5
TOTAL	**11.8**	**19.9**	**15.3**

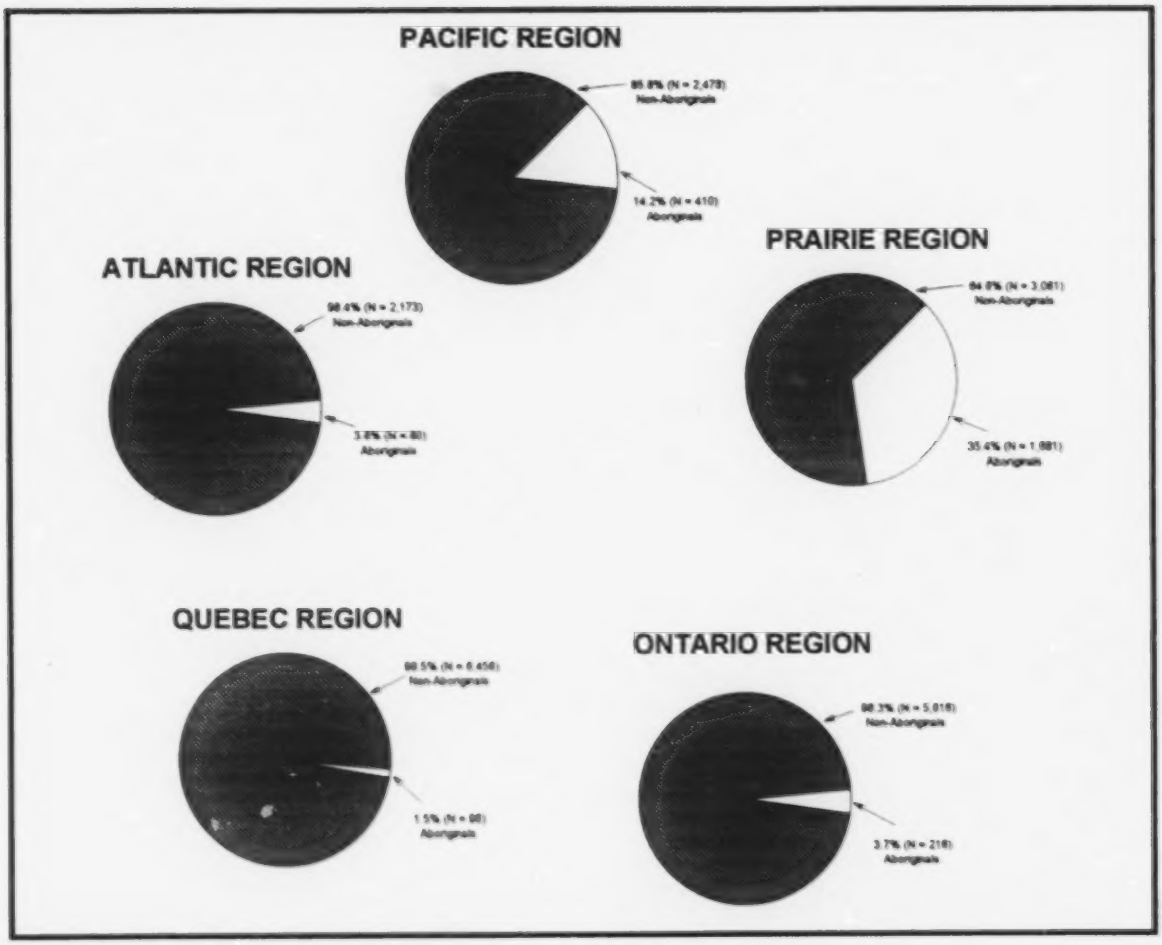
(Source: Canadian Centre for Justice Statistics, Adult Correctional Services in Canada, Statistics Canada. 1993)

Table III.2 Correctional Status by Aboriginal and Non-Aboriginal and Type of Offense, 1995

TYPE OF OFFENSE	PRESENT STATUS	ETHNICITY				TOTAL		p.
		ABORIGINAL		NON-ABORIGINAL				
		n	%	n	%	n	%	
SCHEDULE 1 OFFENSE	INCARCERATED	1451	78	7978	68	9429	69	p = 0.000
	SUPERVISED	420	22	3734	32	4154	31	
	TOTAL	1871	14	11712	86	13583	100	
SCHEDULE 2 OFFENSE	INCARCERATED	67	60	1679	50	1746	50	p = 0.05
	SUPERVISED	45	40	1672	49	1717	50	
	TOTAL	112	3	3351	97	3463	100	

(CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

Figure III.1 % Aboriginal and Non-Aboriginal Offenders* by Region, July 1995



(Source:York 1995:6) * Includes those incarcerated and under community supervision.

Table III.3 Sentenced Admissions Rates Per 10,000 Population for Aboriginal and Non-Aboriginal

PROVINCES	Aboriginal			Non-Aboriginal		
	Population	Number of Aboriginal Sentenced Admissions	Rate/ 10,000	Population	Number of Non-Aboriginal Sentenced Admissions	Rate/ 10,000
British Columbia	172,470	1835	106	3,207,330	8053	25
Alberta	149,855	10204	681	2,451,445	23125	94
Saskatchewan	97,670	5101	522	908,630	1922	21
Manitoba	117,450	2282	194	995,050	2013	20
Ontario	246,895	2849	115	10,224,605	37908	37
Average Rate/10,000			323			39

(Population Source 1991 Census; Sentenced Admission Data Taken From 1991 Provincial Data Sets, except for Saskatchewan 1993 data was used)

Table III.4a Ratio of Aboriginal and Non-Aboriginal Sentenced Admissions

PROVINCES	Aboriginal Sentenced Admissions Rate/10,000	Non-Aboriginal Sentenced Admissions Rate /10,000	Ratio of Aboriginal to Non-Aboriginal Sentenced Admissions
British Columbia	106	25	4.24
Alberta	681	94	7.24
Saskatchewan	522	21	24.85
Manitoba	194	20	9.7
Ontario	115	37	3.1
Average Rate	323	39	8.28

Population Source 1991 Census; Sentenced Admission Data Taken From 1991 Provincial Data Sets, except for Saskatchewan 1993 data was used

Table III.4b Percent Remand & Sentenced Admissions and Total Aboriginal Population

Provinces	Percent of Aboriginal Offenders in Remand Admissions	Percent of Aboriginal Offenders in Sentenced Admissions	Percent of the Total Population
British Columbia	18.9	17.3	5
Alberta	28.8	31.0	6
Saskatchewan	69.3	72.5	10
Manitoba	55.0	54.2	11
Ontario	6.1	6.9	3

(For the Years 1988-1995 except for Saskatchewan and Ontario)

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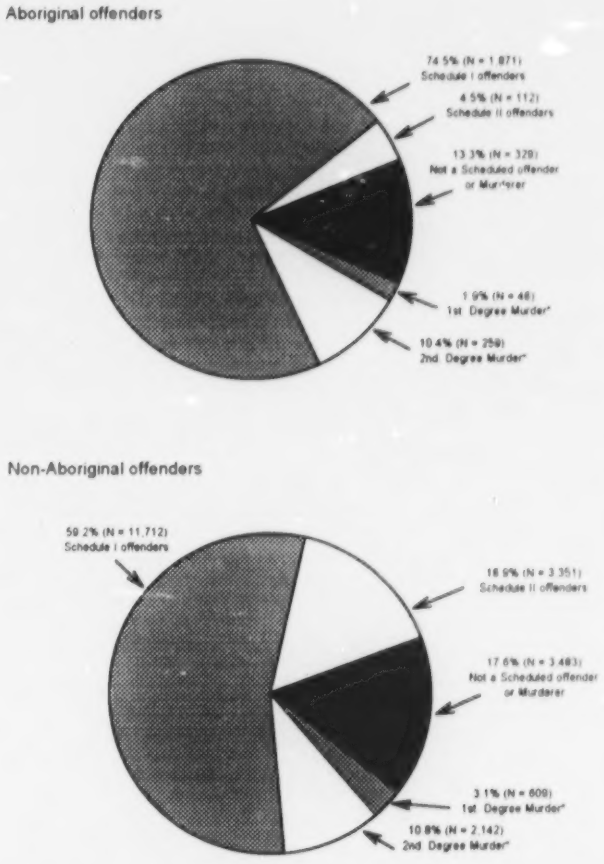
Figure III.2 General Offense Type For Aboriginal and Non-Aboriginal Offenders, 1995



* An offender in the 1st. or 2nd. degree murder category can also be in the Schedule I or II category. Seventy four Aboriginal and 686 non-Aboriginal offenders serving time for 1st. and 2nd. degree murder are also serving time for Schedule I offences. In addition, 65 non-Aboriginal and no Aboriginal offenders in the 1st. or 2nd. degree murder category are serving time for Schedule II offences.

(Source; York 1995:18)

Table III.5 Specific Offense Type for Aboriginal and Non-Aboriginal Offenders, 1995

SPECIFIC OFFENSE TYPE - ABORIGINAL AND NON-ABORIGINAL OFFENDER				
	ABORIGINAL		NON-ABORIGINAL	
OFFENSE	PERCENT OF ABORIGINAL OFFENDER POPULATION*	N	PERCENT OF NON-ABORIGINAL OFFENDER POPULATION*	N
1st. DEGREE MURDER	1.9%	46	3.1%	609
2nd. DEGREE MURDER	10.4%	259	10.8%	2,142
SCHEDULE I				
ATTEMPTED MURDER	1.6%	39	3.2%	640
MANSLAUGHTER	10.1%	250	5.0%	991
ASSAULT CAUSING INJURY	28.4%	706	16.7%	3,296
KIDNAPPING	5.0%	125	7.3%	1,435
SEXUAL ASSAULT	8.1%	202	7.3%	1,444
SEX INVOLVING A CHILD	3.1%	78	3.7%	735
FIREARMS OFFENSE	5.5%	136	10.4%	2,051
ROBBERY	25.3%	627	30.5%	6,042
ARSON	0.6%	14	0.9%	185
PRISON BREACH	1.1%	28	1.4%	283
SCHEDULE II				
TRAFFICKING	4.6%	114	16.1%	3,176
IMPORT/EXPORT	0.2%	5	3.2%	635
CULTIVATION	-	0	0.4%	75
MONEY LAUNDERING	0.04%	1	0.6%	121
Total offenses		2,630		23,860
total offenders		2,483		19,784
Percent of offenders that fit into more than one offense category	5.6%		17.1%	

*Percents are based upon the number of Aboriginal or non-Aboriginal offenders in each offense category divided by the total number of offenders in the specific column. Column percents will not total 100 because offenders can be in more than one offense category. For example, 16 Aboriginal and 359 non-Aboriginal offenders in the first degree murder category are also serving the same sentence for offenses ranging from second degree murder to prison breach and cultivation.

(Source: York 1995:19)

Table III.6 Type of Offense by Region for Aboriginal and Non-Aboriginal Offenders, 1995

TYPE OF OFFENSES	REGION																			
	ATLANTIC				QUEBEC				ONTARIO				PRAIRIE				PACIFIC			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1ST DEGREE MURDER	2	2.5	40	1.8	1	1.0	192	3.0	7	3.2	163	2.9	22	1.3	86	2.8	14	3.4	128	5.2
2ND DEGREE MURDER	11	13.8	167	7.7	3	3.1	624	9.6	33	15.3	686	12.2	155	9.2	265	8.6	57	13.9	400	16.1
SCHEDULE I																				
ATTEMPTED MURDER	3	3.8	40	1.8	4	4.2	271	4.2	4	1.9	191	3.4	14	0.8	60	2.0	14	3.4	78	3.1
MANSLAUGHTER	6	7.5	64	2.9	12	12.5	370	5.7	23	10.6	341	6.1	177	10.5	109	3.6	32	7.8	107	4.3
ASSAULT CAUSING INJURY	32	40.0	428	19.7	39	40.6	1149	17.8	63	29.2	902	16.1	470	28.0	450	14.7	102	24.9	367	14.8
KIDNAPPING	4	5.0	100	4.6	10	10.4	737	11.4	11	5.1	270	4.8	74	4.4	147	4.8	26	6.3	181	7.3
SEXUAL ASSAULT	3	3.8	208	9.6	8	8.3	322	5.0	22	10.2	419	7.5	110	6.5	259	8.5	59	14.4	236	9.5
SEX INVOLVING A CHILD	7	8.8	123	5.7	8	8.3	174	2.6	8	3.7	215	3.8	46	2.7	163	5.3	9	2.2	60	2.4
FIREARMS OFFENSE	2	2.5	100	4.6	10	10.4	935	14.5	14	6.5	544	9.7	87	5.2	245	8.0	23	5.6	227	9.2
ROBBERY	11	13.8	416	19.1	27	28.1	2511	38.9	52	24.7	1558	27.7	427	25.4	803	26.2	110	26.9	754	30.4
ARSON	-	-	31	1.4	-	-	63	1.0	2	0.9	49	0.9	12	24.5	23	0.8	-	-	19	0.8
PRISON BREACH	-	-	20	0.9	1	1.0	160	2.4	3	1.4	51	0.9	21	1.2	27	0.8	3	0.7	25	1.0
SCHEDULE II																				
TRAFFICKING	1	1.3	293	13.4	8	8.3	1286	19.9	10	4.6	851	15.1	78	4.6	483	15.8	17	4.1	263	10.6
IMPORT/ EXPORT	-	-	21	1.0	1	1.0	258	4.0	2	0.9	272	4.8	2	.1	26	.8	2	0.5	58	2.3
CULTIVATION	-	-	8	0.4	-	-	12	0.2	-	-	13	0.2	-	-	34	1.1	-	-	8	0.3
MONEY LAUNDERING	-	-	6	0.3	-	-	19	0.3	1	0.5	62	1.1	-	-	24	0.8	-	-	10	0.4
TOTALS OFFENDERS	**80**		**2173**		**96**		**6456**		**216**		**5616**		**1681**		**3061**		**410**		**2478**	

(CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

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Table III.7 Specific Offense Type for Aboriginal and Non-Aboriginal Offenders for Institution and Community Supervision, 1995

Offense	Incarcerated offenders		Offenders under community supervision		Total offenders population	
	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
	Percents indicate the proportion of Aboriginal or non-Aboriginal offenders in each offense category.					
First Degree Murder	43 (2.3%)	529 (4.3%)	3 (0.5%)	80 (1.1%)	46 (1.9%)	609 (3.1%)
Second Degree Murder	183 (9.7%)	1,318 (10.7%)	76 (12.8%)	824 (11.0%)	259 (10.4%)	2,142 (10.8%)
SCHEDULE I						
Attempted Murder	29 (1.5%)	437 (3.5%)	10 (1.7%)	203 (2.7%)	39 (1.6%)	640 (3.2%)
Manslaughter	196 (10.4%)	598 (4.9%)	54 (9.1%)	393 (5.3%)	250 (10.1%)	991 (5.0%)
Assault Causing Injury	550 (29.1%)	2,366 (19.2%)	156 (26.3%)	930 (12.5%)	706 (28.4%)	3,296 (16.7%)
Kidnapping	98 (5.2%)	1,042 (8.5%)	27 (4.5%)	393 (5.3%)	125 (5.0%)	1,435 (7.3%)
Sexual Assault	170 (9.0%)	1,081 (8.8%)	32 (5.4%)	363 (4.9%)	202 (8.1%)	1,444 (7.3%)
Sex Involving a Child	60 (3.2%)	535 (4.3%)	18 (3.0%)	200 (2.7%)	78 (3.1%)	735 (3.7%)
Firearms Offense	102 (5.4%)	1,378 (11.2%)	34 (5.7%)	673 (9.0%)	136 (5.5%)	2,051 (10.4%)
Robbery	490 (25.9%)	4,010 (32.6%)	137 (23.1%)	2,032 (27.2%)	627 (25.3%)	6,042 (30.5%)
Arson	10 (0.5%)	108 (0.9%)	4 (0.7%)	77 (1.0%)	14 (0.6%)	185 (0.9%)
Prison Breach	22 (1.2%)	200 (1.6%)	6 (1.0%)	83 (1.1%)	28 (1.1%)	283 (1.4%)
SCHEDULE II						
Trafficking	67 (3.5%)	1,606 (13.0%)	47 (7.9%)	1,570 (21.0%)	114 (4.6%)	3,176 (16.1%)
Import/Export	3 (0.2%)	319 (2.6%)	2 (0.3%)	316 (4.2%)	5 (0.2%)	635 (3.2%)
Cultivation	0	34 (0.3%)	0	41 (0.5%)	0	75 (0.4%)
Money Laundering	1 (0.1%)	83 (0.7%)	0	38 (0.5%)	1 (<0.1%)	121 (0.6%)
Total offenses	2,024	15,644	606	8,216	2,630	23,860
Total offenders	1,889	12,318	594	7,466	2,483	19,784
Percent of offenders that fit into more than one offense category	6.7%	21.3%	2.0%	9.1%	5.6%	17.1%

* Percents are based upon the number of Aboriginal or non-Aboriginal offenders in each offense category divided by the total number of offenders in the specific column. Column percents will not total 100 because offenders can be in more than one offense category. For example, 16 Aboriginal and 359 non-Aboriginal offenders in the first degree murder row are also listed in other rows for offenses ranging from second degree murder to prison breach and cultivation.

(Source: York 1995:40)

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Table III.8 Specific Offence Type for Aboriginal and Non-Aboriginal Federally Sentenced Females, 1995

OFFENSE	Non-Aboriginal	Aboriginal	Total
Murder			
First Degree Murder	14	0	14
Second Degree Murder	33	11	44
Sub Total	47 (13.2)	11(15.9)	58
Schedule I			
Manslaughter	25	15	40
Attempted Murder	8	0	8
Sex Assault	1	0	1
Sex Involving a Child	2	0	2
Robbery	46	14	60
Arson	5	0	5
Kidnapping	8	3	11
Firearm	7	2	9
Injure	39	17	56
Prison Breach	3	2	5
Sub Total	144 (44.2)	53 (76.8)	197
Schedule II			
Trafficking	50	0	50
import/export	45	1	46
Cultivate	0	0	0
Property	4	0	4
Sub Total	99(44.2)	1(1.4)	100
Non-Schedule	36	4	40
Sub Total	36(11.0)	4(5.8)	40
Total	326	69	395
There were a total of 323 offenders			

(Numbers found in brackets are column percents) (Source CSC Revised Oct. 11/95)

Table III.9 Sentence Length for Aboriginal and Non-Aboriginal Offenders, 1995

SENTENCE LENGTH (YEARS)	INCARCERATED OFFENDERS		OFFENDERS UNDER COMMUNITY SUPERVISION		TOTAL OFFENDER POPULATION	
	Aboriginal[a]	Non-Aboriginal[b]	Aboriginal[c]	Non-Aboriginal[d]	Aboriginal[e]	Non-Aboriginal[f]
	Column percents in brackets.					
2-3	383 (20.3%)	2,013 (16.3%)	148 (24.9%)	1,475 (19.8%)	531 (21.4%)	3,488 (17.6%)
3-4	327 (17.3%)	1,806 (14.7%)	148 (24.9%)	1,425 (19.1%)	475 (19.1%)	3,231 (16.3%)
4-5	260 (13.8%)	1,300 (10.6%)	63 (10.6%)	850 (11.4%)	323 (13.0%)	2,150 (10.9%)
5-6	172 (9.1%)	1,021 (8.3%)	41 (6.9%)	605 (8.1%)	213 (8.6%)	1,626 (8.2%)
6-7	113 (6.0%)	742 (6.0%)	34 (5.7%)	392 (5.3%)	147 (5.9%)	1,134 (5.7%)
7-8	93 (4.9%)	600 (4.9%)	28 (4.7%)	285 (3.8%)	121 (4.9%)	885 (4.5%)
8-9	78 (4.1%)	490 (4.0%)	8 (1.3%)	235 (3.1%)	86 (3.5%)	725 (3.7%)
9-10	44 (2.3%)	328 (2.3%)	5 (0.8%)	156 (2.1%)	49 (2.0%)	484 (2.4%)
10-15	109 (5.8%)	1,078 (8.8%)	32 (5.4%)	516 (6.9%)	141 (5.7%)	1,594 (8.1%)
15-20	35 (1.9%)	436 (3.5%)	5 (0.8%)	206 (2.8%)	40 1.6%)	641 (3.2%)
20+	13 (0.7%)	422 (3.4%)	3 (0.5%)	238 (3.2%)	16 (0.6%)	660 (3.3%)
LIFE	260 (13.8%)	2,073 (16.8%)	78 (13.1%)	1,070 (14.3%)	338 (13.6%)	3,143 (15.9%)
COLUMN TOTALS[g]	1,889	12,318	594	7,466	2,483	19,784

[a] Excluding Lifers, Mean Sentence Length = 4.3 years; Median = 3; Std. Dev. = 3.8; Range = 31.0
[b] Excluding Lifers, Mean Sentence Length = 5.4; Median = 4; Std. Dev. = 5.8; Range = 73.0
[c] Excluding Lifers, Mean Sentence Length = 3.7; Median = 3; Std. Dev. = 3.2; Range = 23.0
[d] Excluding Lifers, Mean Sentence Length = 4.9; Median = 3; Std. Dev. = 5.4; Range = 63.0
[e] Excluding Lifers, Mean Sentence Length = 4.2; Median = 3; Std. Dev. = 3.6; Range = 31.0
[f] Excluding Lifers, Mean Sentence Length = 5.2; Median = 4; Std. Dev. = 5.7; Range = 73.0
[g] Percents may not total 100 because the sentence length has not been calculated for 26 new inmates.
[*] Excluding Lifers, Mean Sentence Length for all Aboriginal and non-Aboriginal offenders is 5.1 years; Median =3; Std. Dev. = 5.5

(Source: York 1995:36)

Table III.10 Type of Offense by Sentence Length for Aboriginal and Non-Aboriginal Offenders, 1995

TYPE OF OFFENSES	LENGTH OF SENTENCE	REGION				TOTAL		p. chi square
		Aboriginal		Non-Aboriginal		TOTAL		
		n	%	n	%	n	%	
SCHEDULE I								
ATTEMPTED MURDER	2-5 years	5	17	73	16	**78**	**16**	**p = n.s.**
	6-9 years	8	27	104	23	**112**	**23**	
	10-14 years	9	30	110	24	**119**	**25**	
	15 or more years	8	27	167	37	**175**	**36**	
	Total	30	6	454	94	**484**	**100**	
MANSLAUGHTER	2-5 years	79	34	181	21	**260**	**23**	**p = 0.000**
	6-9 years	101	44	327	37	**428**	**38**	
	10-14 years	33	14	222	25	**255**	**23**	
	15 or more years	17	7	152	17	**169**	**15**	
	Total	230	21	882	79	**1112**	**100**	
ASSAULT CAUSING INJURY	2-4 years	417	63	1389	47	**1806**	**50**	**p = 0.000**
	5-7 years	145	22	673	23	**818**	**22**	
	8-10 years	57	9	326	11	**383**	**11**	
	11 or more years	44	7	595	20	**639**	**16**	
	Total	663	18	2983	82	**3646**	**100**	
KIDNAPPING	2-4 years	38	36	355	29	**393**	**29**	**p = 0.01**
	5-7 years	29	27	263	21	**292**	**22**	
	8-10 years	20	19	170	14	**190**	**14**	
	11 or more years	19	18	445	35	**464**	**35**	
	Total	106	8	1233	92	**1339**	**100**	
SEXUAL ASSAULT	2-4 years	73	39	449	36	**522**	**36**	**p = n.s.**
	5-7 years	56	30	371	30	**427**	**30**	
	8-10 years	23	12	182	14	**205**	**14**	
	11 or more years	33	18	254	20	**287**	**20**	
	Total	185	13	1256	87	**1441**	**100**	
SEX INVOLVING A CHILD	2-4 years	41	53	408	56	**449**	**56**	**p = n.s.**
	5-7 years	25	32	214	30	**239**	**30**	
	8-10 years	11	14	67	9	**78**	**10**	
	11 or more years	-	-	35	5	**35**	**4**	
	Total	77	10	724	90	**801**	**100**	

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TYPE OF OFFENSES	LENGTH OF SENTENCE	REGION				TOTAL		p.
		Aboriginal		Non-Aboriginal		TOTAL		
		n	%	n	%	n	%	
FIREARMS OFFENSE	2-4 years	42	33	461	24	**503**	**25**	**p = 0.000**
	5-7 years	41	32	394	21	**435**	**21**	
	8-10 years	19	15	272	14	**291**	**14**	
	11 or more years	25	20	782	41	**807**	**40**	
	Total	127	6	1909	94	**2036**	**100**	
ROBBERY	2-4 years	306	52	2287	40	**2593**	**41**	**p = 0.000**
	5-7 years	156	26	1296	23	**1452**	**23**	
	8-10 years	64	11	682	12	**746**	**12**	
	11 or more years	66	11	1393	25	**1459**	**23**	
	Total	592	9	5658	91	**6250**	**100**	
ARSON	2-5 years	6	46	87	51	**93**	**51**	**p = n.s.**
	6-9 years	5	38	38	22	**43**	**23**	
	10 or more years	2	15	46	27	**48**	**26**	
	Total	13	7	171	93	**184**	**100**	
PRISON BREACH	2-5 years	6	27	44	22	**50**	**23**	**p = n.s.**
	6-10 years	7	31	41	21	**48**	**22**	
	11 or more years	9	41	114	57	**123**	**56**	**chi square**
	Total	22	10	199	90	**221**	**100**	
SCHEDULE II								
TRAFFICKING	2-5 years	84	74	2041	66	**2125**	**66**	**p = n.s.**
	6-10 years	22	19	651	21	**673**	**21**	
	11 or more years	8	7	394	13	**402**	**13**	
	Total	114	4	3086	96	**3200**	**100**	
IMPORT/EXPORT	2-5 years	3	60	266	42	**269**	**42**	**cells too small**
	6-10 years	2	40	211	34	**213**	**33**	
	11 or more years	-	-	151	24	**151**	**24**	
	Total	5	1	628	99	**633**	**100**	
CULTIVATION	2-5 years	-	-	63	86	**63**	**86**	**cells too small**
	6-10 years	-	-	6	8	**6**	**8**	
	11 or more years	-	-	4	5	**4**	**5**	
	Total	-	-	73	100	**73**	**100**	
MONEY LAUNDERING	2-5 years	-	-	84	69	**84**	**69**	**cells too small**
	6-10 years	1	100	28	23	**29**	**24**	
	11 or more years	-	-	9	7	**9**	**7**	
	Total	1	1	121	99	**122**	**100**	

(This includes only those offenders who have an actual sentence length does not include those offenders with indeterminate or life sentences.) (CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

Table III.11 Sentence Length by Region for Aboriginal and Non-Aboriginal Offenders, 1995

SENTENCE LENGTH	REGION																TOTAL			
	ATLANTIC				QUEBEC				ONTARIO				PRAIRIE				PACIFIC							
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
2 - 4 YEARS	45	68	1297	67	57	65	2822	51	83	48	2363	51	977	66	1579	59	167	51	808	44	1329	62	8869	53
5 - 7 YEARS	12	18	379	20	14	16	1105	20	56	33	1110	24	310	21	615	23	89	27	436	24	481	22	3645	22
8 - 10 YEARS	5	8	135	7	11	13	617	11	19	11	587	13	126	8	218	8	36	11	217	12	197	9	1774	11
11 OR MORE YEARS	4	6	131	7	6	7	1031	18	14	8	549	12	77	5	248	9	34	10	371	20	135	6	2330	14
TOTAL	**66**		**1942**		**88**		**5575**		**172**		**4609**		**1490**		**2660**		**326**		**1832**		**2142**		**16618**	
Chi-Square	p = n.s.				p = 0.02				p = n.s.				p = 0.000				p = 0.001				p = 0.000			

(This table excludes offenders with a life sentence) (CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

Table III.12 Mean Sentence Length by Offense Type and Total Offenses for Federally Sentenced Aboriginal and Non-Aboriginal Females

Type of Offense	Aboriginal	Non-Aboriginal
	Mean Sentence Length (years)	Mean Sentence Length (years)
Non Schedule offense	4.7	4.1
Schedule 2	2.5	5.0
Schedule 1	4.2	5.0
Total Offenses	3.6	4.2

(CSC, Accountability and Performance Measurement Sector July 2 ,1995; Data)

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PART IV. EXPLAINING ABORIGINAL OVER-REPRESENTATION

PART IV. EXPLAINING ABORIGINAL OVER-REPRESENTATION

In earlier work, three possible causes of aboriginal over-representation in the criminal justice system were identified. These were: differential criminal justice system processing as a result of culture conflict and racial discrimination, higher aboriginal offending rates, and the commission by aboriginal people of the type of offences that are more likely to result in carceral sentences.[1] I now believe that a fourth cause – criminal justice policies and practices that have a differential impact on aboriginal offenders due to their socio-economic conditions – also contributes to over-representation.

The state of research in each of these areas is limited but it would appear that the contributing factors to over-representation are primarily a higher aboriginal offending rate and the commission of the type of offences (especially more violent offences for federally sentenced offenders) which lead to a carceral sentence. But that does not mean the other two factors do not also play an important role. Differential processing may result from systemic or racial bias, and practices and policies, such as incarceration for fine defaulters (as discussed in Part III), may have more severe consequences for aboriginal than non-aboriginal offenders because of greater economic marginalization. In Canada, polices and practices may even have a differential impact on aboriginal offenders in different parts of the country. Many of the criminal incidents of aboriginal people are social and economic in origin. Where the response is to the offence and not to the underlying social problem, this will have the most negative effect on the most marginalized groups.

The important question is why aboriginal people in Canada are so disproportionately involved in and vulnerable to the policies and practices of the criminal justice system. What follows below is a possible framework for understanding these factors.

Background

The failure of the justice system in its dealings with aboriginal people and culture conflict between aboriginal and non-aboriginal society, are common explanations for the disproportionate incarceration of aboriginal people. When examining general characteristics of inmate populations, however, the aboriginal over-representation phenomenon in Canada, Australia and New Zealand (all countries where aboriginal people were colonized and are now in a minority situation), is hardly surprising. Where poor living conditions, poverty and general social and economic deprivation of certain groups exist, disproportionate prison rates must surely follow. Cultural, structural and other theories (such as social control) commonly employed to explain disproportionate involvement of aboriginal people in the criminal justice and correctional systems, are often presented as if mutually exclusive.[2]

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[1] LaPrairie, 1992.

[2] Oka, 1995.

When the role of the criminal justice process in contributing to the problem is examined, there are no clear answers, especially when variation in levels of aboriginal incarceration is considered. While we can identify the high risk that many aboriginal people face in offending, being victimized, arrested and imprisoned, the contributions of racial bias and unwarranted treatment on the part of the criminal justice system, or of culture conflict (defined as conflict between norms of behaviour in divergent cultural groups) are much less clear. This is so in Canada and Australia.[3] A surprising finding in both countries, is that aboriginal accused consistently receive shorter sentences even when controlling for offence type.[4] Existing data do not suggest aboriginal offenders (particularly those federally sentenced) have fewer prior records or commit less serious offences. Some evidence suggests the opposite.[5] While knowledge of criminal justice processing is still limited,[6] available data suggest the over-involvement of aboriginal people in the criminal justice and correctional systems cannot be attributed to racial bias alone.

Broadhurst (1996:75) supports the culture conflict argument for explaining aboriginal over-representation in Australia. He argues that "As in many former colonies the surviving indigenous people [in Australia] have become socially and economically marginalized and significantly criminalized". He focuses primarily on cultural issues using measures of "Aboriginality" i.e., population, land area occupied and controlled by aboriginal people, retention of traditional aboriginal language, in addition to various measures of the rate of imprisonment. He finds a relationship between degree of "cultural" measures of aboriginality (population, area occupied and language retention) and levels of imprisonment.[7] At the same time, however, Broadhurst acknowledges that Cove (1992), in exploring aboriginal imprisonment in Tasmania the state with the lowest rate, found that the levels of urbanization and employment of Tasmanian aborigines were much higher than the national aboriginal averages.[8] In Canada there are similar anomalies across the county. If culture conflict and discrimination in criminal justice processing determined levels of aboriginal incarceration, over-representation would be a similar problem in most parts of Canada but correctional and other criminal justice data clearly show this is not the case.

This suggests that a multi-dimensional approach to understanding the causes of aboriginal over-involvement in the criminal justice system is required. The deconstruction (i.e., the rejection) of mainstream criminological language has inhibited the development of more sophisticated theory for explaining aboriginal over-representation in the criminal justice system. Deconstruction has come about for two reasons. First, the influences of post-modernism have created an environment where individual expressions of role, identity and culture have become dominant in defining the nature of the problem and the solutions, and the primary methodology for generating information. Second, these expressions, in conjunction with a political movement adopting a similar ideology,

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[3] see Broadhurst, 1996; Hann *et al*, 1993; Muirhead, 1982.

[4] Broadhurst, 1996.

[5] Broadhurst, 1996; Doob *et al*, 1994.

[6] see Roberts and Doob, 1994.

[7] This group would be most similar to aboriginal people living on or spending the majority of their lives on reserves in Canada.

[8] op cite 4:77.

have created a distinct "knowledge" of or "worldview" held by aboriginal people which, despite enormous diversity of the aboriginal experience in Canada, have dictated the discourse. In large measure, theory has been reduced to cultural explanations of aboriginal over-representation in the criminal justice system.

In order to understand this over-involvement and to accommodate the diversity within aboriginal society and the impact of history in bringing about changes in this society, it is necessary, therefore, to "reconstruct" theory. Knowledge about aboriginal people and their over-involvement in the criminal justice system includes, but goes beyond, the cultural dimension. Understanding contemporary aboriginal communities, the weakening of interdependencies and the increase in dependency on external social and economic structures as a result of historical and contemporary processes, requires a more sophisticated analysis than culture conflict alone can provide. The following discussion is a preliminary attempt to construct such an analysis.

1. New Theoretical Formulations

Other explanations for aboriginal over-involvement in the criminal justice are now emerging. In the U.S., Green (1993) reviewed contemporary literature on American Indian criminality and criminal justice outcomes within the sociological framework of the Native American experience, in order to understand the involvement of aboriginal people in the criminal justice system. He noted that previous research failed to take into account the diversity of the Indian experience. He concluded that social control theories (based on family and structural conditions) – which argued that illegal behaviour is the result of a lack of attachment to and involvement in both Indian and non-Indian societies – may be more useful in explaining Native American crime and delinquency than culture conflict theory. Green's emphasis on the sociological context reflects the need for recognition in theory of change and diversity in Native American society. An understanding of crime and delinquency requires a much broader and more conceptually sophisticated framework than reliance on culture conflict theories alone provides.

We begin from a somewhat different place and draw on the work of John Braithwaite (1990), who "advances the theory that nations with low crime rates, and periods of history where crime is more effectively controlled, are those where shaming has the greatest social power".[9] In short, Braithwaite argues that stigmatizing offenders creates outcasts, whereas reintegrative shaming involves disapproval but subsequent forgiveness and acceptance back into the group. This ultimately reduces re-offending. The key to effective shaming, he suggests, is the degree of interdependency among people. Interdependencies reduce offending because people do not want to be shamed or bring shame upon those individuals important to them. In his article, *Shame and Modernity* (1993), Braithwaite argues that, contrary to popular opinion, interdependencies between people and families have increased in Western societies in the past three centuries.

[9] Braithwaite, 1993:1.

The opposite may be the case in aboriginal societies, even though conventional wisdom and earlier work[10] contest such a view. The argument put forward here is that a decline in interdependency in aboriginal communities has come about as the result of historical processes (which have reproduced mainstream social structure without accompanying institutional development), as well as cultural dislocation and the decline of informal mechanisms of social control. The end result is socially stratified communities where limited resources and resource distribution create large groups of disadvantaged people, a growing youth sub-culture with few legitimate outlets or opportunities, decontextualized exposure to the mass media, and the lack of cultural and social resources to assist in identify formation which support pro-social values. It is, however, misleading and incorrect to assume that all aboriginal communities in Canada are exposed to the same contingencies and limitations as a result of these historical and contemporary processes. This is clearly not the case and such an assumption inhibits the degree of attention required by those individuals and communities most in need. The degree and impact of change has been mediated by settlement patterns, geographic location, cultural factors, and individual community experience, so there is variation in the degree to which these influences have affected communities.

2. Colonization and the Creation of Contemporary Aboriginal Communities

Contemporary aboriginal community structures are the products of historical processes, wherein colonization and the creation of the reserve system came about as a result of cultural conflict and conflict over land ownership and possession. One critical outcome was the induction of aboriginal people into marginal geographic, social and economic structures from which it is very difficult to escape. These structures have had profound effects on family life and kinship relations, other community relationships, loss of customary social control practices, movement, and traditional roles and obligations. They also dictate the shape and form of contemporary aboriginal communities and community life, and the opportunities and resources available to people to form pro-social attitudes and to create full and productive lives.

We argue that reserve life creates its own set of problems. Aboriginal justice research reveals that registered Indians are over-represented in inmate populations and inner cities as compared to non-Status and Metis groups.[11] For example, in a daily count in Saskatchewan institutions in 1994, 78% of the aboriginal inmates were status Indians as compared to 12% Metis and 10% non-status. Although the majority commit the offences for which they are incarcerated occur in urban areas, they are also originally from reserves, as recent CSC data reveal.

Several factors combine to create conditions of vulnerability for this group of aboriginal people, particularly those from Prairie reserves. The first is that (as a result of colonization and dependency as described above) many contemporary reserves are characterized by geographic isolation, small size, poor land, lack of educational, employment and other resources, differential

[10] LaPrairie, 1992.

[11] see Rudin, 1995, Irvine, 1978, LaPrairie, 1994.

access to community options and opportunities, and alienation from mainstream society. They may function as closed societies with little accountability, connections or exposure to the outside world. The reserve system isolated, and continues to isolate, many aboriginal people from mainstream society. It also creates communities especially vulnerable to crime and disorder because of isolation, lack of employment and education, large numbers of young people with little to do, and cultural disintegration resulted in a decrease in interdependencies. In addition to geographic isolation and poverty, the administration of reserves as defined in contemporary legislation (i.e., *The Indian Act*), creates divisions within communities which produce more marginalized groups. The over-representation of aboriginal people as offenders in the criminal justice system is a logical outcome of these forces.

Differences in history and patterns of settlement, land value, geography and size, as well as social, political and economic organization of reserves, may also account for disproportionate aboriginal incarceration levels in eastern and western Canada.[12] Interestingly, the provinces with the highest levels of unemployment, the lowest levels of education and income for both on-reserve and off-reserve registered Indians (Saskatchewan, Alberta and Manitoba) also have the most disproportionate incarceration levels. With high off-reserve migration and permanent residency of aboriginal people in these settings, inner cores of some western cities show signs of becoming entrenched aboriginal-ghetto areas.[13]

3. The Reproduction of Mainstream Social Structure in Aboriginal Communities

The forces which shape contemporary communities are the creation of a reserve system, the provisions of The Indian Act which locate control of resources in the hands of an elected chief and council, the introduction of wage labour and education, and mass media communication. While it is difficult if not impossible to determine the exact influence of each, taken together, their influence has been profound in bringing about changes to traditional aboriginal societies.

For many reserves, the lack of a common community identity to act as a bond between families and groups[14], the demise of interdependency based on traditional economic activities structured around age and gender, and forced living together in sedentary communities, create stress and tension. For those with access to power through employment and kinship, reserve life works well. For those with neither, it works badly.[15] The latter are excluded from opportunities when on-

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[12] op cite 1.

[13] In earlier work, Rattner and McKie (1990) found that the proportion of native people and the unemployment rate constituted the best predictors of the violent crime rate in Ontario.

[14] In her compelling ethnographic work in Australia, Brady (1993) found that in the aboriginal communities in which she conducted field work, obligations to kin rather than to community dictated access to resources.

[15] Cooper *et al* (1992), in a comparison of suicide rates of aboriginal people on and off-reserve in B.C. using 1984-89 suicide data, found that off-reserve rates were similar to non-aboriginal rates whereas on-reserve rates were more than twice that of non-aboriginal rates. Aboriginal reserves with high rates had markedly less healthy population characteristics than reserves with low rates.

reserve and, when leaving to seek a better life elsewhere, lack of skills and personal problems relegate them to inferior roles and spaces in cities. More of this group migrate from western reserves and remain in urban areas living marginal lives.[16] They are effectively excluded from access to opportunity, power and place in both societies.

Some, however, have benefited financially and socially from these changes, as indicated by new forms of aboriginal affluence on-reserve. Like most western societies, there is now clear social and economic demarcation in contemporary aboriginal communities. For many others (a disproportionately large group within aboriginal as compared to non-aboriginal society), the lack of access to options and opportunities, and of legitimate connections and attachments in both societies, coupled with disruptive, neglectful and often physically abusive childhood experiences, places them at the greatest risk for involvement in the criminal justice system. This risk is greater off than on-reserve, as LaPrairie found in the inner-city (1994) and James Bay Cree research (1991). The risk is also greater in different parts of the country, namely the Prairie provinces, as correctional data reveal.

Why are non-registered aboriginal people (and especially those not from the most marginalized reserves) less represented in the criminal justice system in Canada?[17] Cove's (1992) research in Tasmania provides some important clues for understanding the situation here. Cove found that the degree of urbanization and "cultural homogeneity both among Tasmanian Aborigines and between them and the wider Tasmanian population" resulted in lower participation levels in the criminal justice system.[18] In Canada, Metis and non-status aboriginal people are more urbanized which may mean that, despite problems with racism and self-identity, they have more involvement with the dominant non-aboriginal society and greater access to its economic, political and social institutions (and thus to the creation of interdependencies) than registered Indians on-reserve or those migrating from reserves.[19] Greater urbanization and acculturation and less physical exclusion from mainstream society, resulting in greater interdependence, may explain lower participation levels in the criminal justice system.[20] Aboriginal people with low educational and skill levels and personal dysfunction resulting from family life and alcohol problems, who leave

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[16] op cite 1.

[17] In Canada in 1991, 1,231,192 Canadians reported having aboriginal origins and consider themselves aboriginals, of which 675,537 people identified themselves as North American Indian. Of the latter, 573,657 are registered Indians - 46.5% of the total aboriginal origins group. Of the registered Indian group, 55% lived on-reserve and 45% off-reserve. A total of 601,090 or 49% of the total aboriginal population in Canada are non-status, Metis or report aboriginal origins (Statistics Canada, The Daily, 1993; DIAND, Indian Register Population, 1994:xv). Despite the fact that there are similar proportions of registered and non-registered aboriginal people in Canada, registered Indians are over-represented in all federal, provincial and territorial correctional institutions where data are available.

[18] Broadhurst, 1996:76-77.

[19] Recent INAC data show that Metis in all provinces have higher levels of labour force participation than registered Indians off-reserve.

[20] In Saskatchewan, for example, the registered Indian population is 1.3 times greater than the combined Metis/non-status population, but there are 3 times more registered Indians than Metis/non-status incarcerated in provincial institutions in 1993.

reserves because of a lack of access to options and opportunities, are faced with the most extreme exclusion from mainstream institutions.[21]

4. The Impact of Cultural Dislocation and Social Stratification on Community Institutions

Social control exercised though informal mechanisms located in the family and the community is not only an integral component of community life, but is the way in which the young are socialized. Social control is exercised in a number of ways and often involves shaming, verbal disapproval, and sometimes even ostracism. Reinforcement through reward and various forms of punishment assist in individual conscience-building and the learning of self-control.[22]

The cultural dislocation in aboriginal societies, the diminishing of traditional family and group authority, and newly stratified social structures which have created social and economic divisions between individuals and families, have profoundly affected the socialization of the young. There is a blurring of roles and responsibilities between young and old, males and females, modernists and traditionalists. New social structures have created categories of haves and have-nots. The role of elders in teaching and in promoting harmony in communities is much less clear than in previous times. There is an increasing reliance on public, formal institutions such as police and social and other services, to mediate disputes and to solve problems. The problems today are much more complex and their resolution much less clear than in more traditional times. Informal institutions and interdependencies among people have declined in importance.

These communities show the stresses and strains of mainstream society but lack the resources for responding to them. For youth, additional stresses come from pressures for cultural conformity, education and language differences between themselves and their parents and grandparents,[23] family pressures to remain on reserves, and a general uncertainly about their futures. Social class, however, can mediate the negative effects of these pressures so the effects are most severe for the most disadvantaged groups.[24] This situation is exacerbated by the disproportionate number of youth on reserves and, in some western cities, in the strengthening of peer subcultures.

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[21] The most critical question the Alaska research raises is the issue of acculturation, particularly after migration to urban areas. The authors argue that in order to have a culture it is necessary to have an integrated set of beliefs and values. To do this people must artificially maintain the old beliefs and values in a new environment or acquire the alien beliefs and values of the dominant society - a difficult and protracted process. Many are thus "stalemated" in an "a-cultural" state. These rapid changes are associated with deculturative and acculturative stresses that can cause psychosocial maladaptation of individuals (Philips and Inui, 1986: 141). We contend that in Canada for the more marginalized people from reserves who have had little or no contact with mainstream society prior to migration, the maladaptation is most severe.

[22] Snider, 1995a:13.

[23] Minde and Minde, 1995:304.

[24] There is an important difference between people who leave reserves for educational and other opportunities and who gain status and recognition from these activities, and those who leave with few opportunities and skills. For

These age demographics and peer sub-cultures on reserves are important factors in understanding disproportionate levels of crime and disorder. Higher birth rates and lower life expectancy mean that most reserves are characterized by large numbers of children and youth. The lessening of traditional authority structures, high unemployment and lack of opportunities and resources and "nothing to do" (a common lament of the young), may result in the formation of strong peer associations and subsequently, involvement in minor offences and disorderly conduct. These behaviours are annoying to community members and worrisome to families and may set the stage for the adoption of anti-social and pro-criminal attitudes, major predictors of involvement in criminal behaviour.[25]

5. Individual Identity Formation in Contemporary Communities

Snider (1995a:3) draws from development theory when she argues that the identities that emerge most often are those that are publicly validated in their social system, and that these vary with the social and cultural resources available. This suggests that in contemporary aboriginal communities identity formation is very different from that of more traditional societies, where roles and responsibilities based on age, gender and status [26]were more clearly defined and understood, and dictated behaviour and sense of self. In contemporary communities, by contrast, the influence of the growing youth sub-culture and social stratification, which determines access to opportunities and options, have largely replaced more traditional influences. The prevailing aboriginal cultural discourse makes certain assumptions about the role and influence of elders upon youth but research on this subject is contradictory at best.[27] However, geographic location, experience, and social and economic resources shape the environment in which individual identities are formed, so there is considerable diversity across the country.

The characteristics, demographics and pathological conditions (as evidenced in rates of alcohol abuse, interpersonal violence, and crime and disorder) of many reserves may be more important factors than lack of identity/culture or racial bias in determining involvement in the criminal justice

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the latter, there have been few opportunities on-reserve and there is little status or positive recognition to be gained on or off-reserve.

[25] In examining the psychology of criminal conduct, Andrews and Bonta (1994) separated well-established correlates of criminal behaviour into major and minor risk factors. The major risk factors were the following: antisocial attitudes, values, beliefs, and cognitive-emotional states; procriminal associates and isolation from anti-criminal others; weak socialization, impulsivity; weak problem-solving/self-regulation skills, restless aggressive energy and below-average verbal intelligence; history of anti-social behaviour evident from a young age; family criminality, low levels of affection, caring and cohesiveness in families, poor parental supervision and discipline practices, outright neglect and abuse; and finally, low levels of personal education, vocational or financial achievement, in particular, and unstable employment. The minor factors included low class, personal distress factors as well as low self-esteem, anxiety, depression and anomic social conditions (Andrews and Bonta, 1994:230-232).

[26] see McDonnell, 1992.

[27] see LaPrairie, 1992, 1994; Condon, 1992; Griffiths *et al*, 1995.

system.[28] Coupled with disrupted family life and/or abuse, these conditions make disadvantaged people who depart reserves and are exposed to urban life susceptible to involvement in systems of social control. Muirhead's (1982) research supports this hypothesis. It challenges the presumption that cultural differences between members of the offender population are of primary importance and argues that underlying structural factors are more significant. He found that "community variables describe the location of individuals in the social structure. And "although natives are frequently connected with rural residency, their highly transient lifestyle frequently positions them in urban settings. These settings may play an important role determining the probability of contact with the justice system" (p.23). This variable proved highly significant with both admissions to and time spent in institutions for aboriginal inmates. Muirhead concluded that native culture is a tenuous and convenient explanation for aboriginal involvement in prisons, and that the disproportionate involvement of aboriginal people in correctional institutions is a result of their disproportionate membership in a marginal underclass. In his analysis, the communities from which people derive are as important as the communities in which their offences are committed.[29]

Conclusions

In explaining aboriginal over-representation in the Canadian criminal justice system, a multi-dimensional model which incorporates cultural, structural, historical and contemporary dimensions has been presented. At the heart of the model is the demise of traditional interdependencies with an increased dependency on external institutions.

In traditional aboriginal society, interdependency was structured into subscribed roles and responsibilities where every individual had a function to perform, and survival depended on that function being performed. In contemporary aboriginal society by contrast, there has been a dramatic decline in interdependencies and an enormous increase in dependency on outside institutions through transfer payments, welfare etc. Nor is there an interdependency with mainstream society but an imbalance between the two. The crime problem is, therefore, likely to be most severe in those communities most geographically isolated from mainstream society, with the greatest demise in traditional practices, most dependent on external financing and welfare, and

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[28] Philips and Inui (1986) found similar problems in communities in Alaska. Their research on Native Alaskan criminal offenders revealed that like aboriginal people in Canada, rates of involvement of Native Alaskans in the criminal justice system are grossly disproportionate to their proportion of the population. They also commit more violent crimes and receive shorter sentences than white offenders. Alcohol abuse is more common among native offenders. However, violence and substance abuse are not necessarily associated with a high degree of contact with non-aboriginal society as is commonly suggested by culture conflict theorists. Offenders who reside in communities with 75% or more native Alaskans have an excess of violent crimes and are more likely to use alcohol or drugs at the time of the crime than offenders from communities with less than 75% natives.

[29] Previous research has found that leaving reserves can make certain individuals and groups more vulnerable to the criminal justice system than when on-reserve. Kinship and other obligations and responsibilities of people living in close proximity, coupled with criminal justice practices in small, often isolated communities, can create a "cushion" against formal processing. In those settings, the community and the system respond more to the offender than to the offence. Outside the reserve, however, the human obligations and social control practices are different, where the offence takes priority over the offender (LaPrairie, 1992, 1994).

with the most disproportionate age structures. These are the communities in which offenders are most likely to experience "pathological" rather than positive shame.[30]

Three factors with the potential to produce pathological shame come into play. The first is that the group most likely to feel this emotion are the most marginalized and least integrated into the community, the second is that reserves are not generally integrated into mainstream Canadian society (because of historical practices of exclusion and the second class - status ascribed to aboriginal people), and the resulting alienation is most prominent in those with the fewest connections to mainstream society; and the third is that exposure to dysfunctional family life and childhood abuse (in addition to other factors conducive to criminal behaviour) create feelings of rejection and anger. Taken together, these factors are most pronounced for the most marginalized groups in communities, and for those people leaving reserves with few personal tools for survival or for gaining status or integration into mainstream society, and with deprived, dysfunctional backgrounds. The propensity for criminal conduct produced by this alienation is compounded by a lack of attachment to people with anti-criminal values - a result of exclusion from institutions and opportunities which promote pro-social values. Formal sanctioning and stigmatizing by the criminal justice system produces anger and defiance [31], one result of which may be re-offending. The lack of integration and status is most pronounced for aboriginal males who fall into this category and who, unlike their female counterparts, are without the status and integrative aspects of child-rearing.

This situation has come about because of colonization, the creation of a reserve system, and the *Indian Act*, which resulted in non-traditional administrative structures in communities. Many contemporary aboriginal communities show increased social stratification and levels of crime and disorder. The problems are most severe In the most socially and economically marginalized communities because of settlement patterns, geography, population, cultural characteristics (i.e., nomad people living in sedentary communities) and poor land use and value. The individuals and families most affected often leave communities because of pressures from within, personal dysfunction's and/or in the expectation of opportunity outside. In the urban setting, however, the lack of education, employment skills, coupled with substance abuse problems and histories of family violence and dysfunction, lead to negative peer associations and the adoption of anti-social and pro-criminal attitudes.

There is a growing problem of marginalized people leaving reserves to live in urban areas. Lack of education and skills, alcohol problems, and exclusion from mainstream institutions plant the seeds for ghetto-living. The effects on children and youth of growing up in ghetto-like conditions is profound.[32] In Canada, this inner-city phenomenon is most obvious in western cities where there

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[30] Scheff and Retsinger (1991) propose that shame evoked by disapproval that is unresolved though reintegration results in anger. They distinguish "normal" and "pathological" shame. Normal shame and shaming produce social solidarity, whereas pathological shame and shaming produce alienation.

[31] Sherman (1993) integrates pathological shame and reaction to criminal sanctions into what he calls the "defiant theory of the criminal sanction", where unresolved personal shame interacts with the criminal stigma to create a defiant criminal response (in Hagan and McCarthy, 1994:3-5).

[32] Farrington, 1994; Sampson, 1987, 1991.

are generations of marginalized people living in aboriginal-concentrated areas. These areas are distinguished by low income, high unemployment, single parent families and large numbers of children and youth. Increased migration of similar groups of people will exacerbate the problem. These groups are characterized by a dependency on mainstream institutions and financial assistance similar to that on reserve.

Unfortunately, little is known about criminal justice processing so racial bias in charging, bail, prosecutions, convictions, sentences and releases cannot be ignored as a contributing factor to over-representation. As Roberts and Doob (1994:16) note in relation to causes of aboriginal over-representation "We do not have adequate data that pertain to cases as they travel through the criminal justice system". Research, such as conducted by Muirhead in B.C., is required in other jurisdictions. Information from B.C. also shows that high rates of reported crime do not have to be reflected in high charging or incarceration levels. Heavy use of fines in provinces with the poorest aboriginal populations (Saskatchewan, Alberta and Manitoba) are bound to lead to over-incarceration of that group. This illustrates the danger of using the criminal justice system to deal with social problems of such magnitude. The role of public attitudes and administrative traditions on sentencing also requires further exploration as unwarranted variation in the use of incarceration for both aboriginal and non-aboriginal offenders, appears to exist across the country

PART V. PROGRAMMING FOR ABORIGINAL INMATES

PART V. PROGRAMMING FOR ABORIGINAL INMATES

In this section, the assessment and classification of offenders, and correctional and treatment approaches most effective in reducing re-offending for various groups of offenders are explored. Security classification is also discussed as access to programs varies according to security level. The philosophy of aboriginal-specific programs and the "fit" between mainstream and aboriginal programming are then examined. A final objective of this section is to explore whether similarities among offenders, cultural differences, or a combination of approaches and philosophies should guide treatment and programming approaches for aboriginal offenders.

1. Assessment and Classification

The Delaware Bureau of Prisons describes offender classification as a "process by which inmates are subdivided into groups based on a variety of considerations which include (1) determination of and assignment to appropriate custody and security levels; (2) program placement based on inmate and work; (3) designation to proper housing placement within the institution; and (4) scheduled review of assignments to reassess an inmate's needs and progress".[1] Typically, inmates are initially classified upon entering the institution (i.e., initial classification) and then periodically reassessed during their stay (i.e., reclassification). Reclassification enables administrators to change or "fine-tune", depending on inmates' behaviour within their current placement or on earlier placements established by previous classifications.[2] Reclassifications then, are commonly based upon institutionally derived information concerning previous and current institutional behaviour whereas initial classifications are usually based on legal court reports such as presentence investigation reports. Determinations made in both classification stages consider institutional levels of security and custody and inmate program capabilities.[3] Security refers to the type of institution in which the inmate should be housed and custody refers to the amount of supervision needed to care for the inmate.[4] These considerations are guided by the inmate's legal (e.g., criminal and incarceration history) and personal (e.g., age) variables as well as any special needs (e.g., mental health).[5]

The primary purpose of objective classification systems is to better manage inmate populations. Inmates vary greatly according to required security and custody levels and program needs, and correctional resources are limited. Classification enables

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[1] Champion, 1994:108.

[2] ibid.

[3] see Buchanan, Whitlow, & Austin, 1986.

[4] Proctor, 1994.

[5] Austin, 1991a.

administrators to match inmates with resources to produce more appropriate, tailored confinements while still maintaining institutional and public safety.[6]

Prior to the reduction in security level classifications by CSC in 1987, more aboriginal than non-aboriginal offenders were in multi-level security, and fewer were in the minimum and medium security classifications.[7] For the past two years, CSC has conducted Intake Assessments of each offender to determine security classification and needs. On July 5, 1995, nearly 35% of federal aboriginal offenders were not classified as compared to only 22% of non-aboriginal offenders. Lack of classification does not affect access to programs but is the result of the availability of intake and other resources in individual institutions. However, where offenders were classified, approximately the same proportion of aboriginal and non-aboriginal offenders were classified for medium, maximum and special handling units (*Figure V.1 Security Classifications - Aboriginal and Non-Aboriginal Federal Offenders, 1995*). In the survey of correctional personnel 70% said aboriginal inmates were properly security classified. See page 79 for Figure V.1.

2. General Correctional Programs

Programs and treatment have more potential to affect inmates in federal than in provincial or territorial institutions because the sentences served in the former are longer. The "revolving door" syndrome is much more prevalent in provincial and territorial institutions where short sentences and remission mean many offenders are either unable to participate in programs or participate for shorter periods of time.[8] An overview of correctional programs and treatment approaches follows.

The widespread pessimism of correctional rehabilitation, spawned by Martinson's (1974) condemning review during the middle to late seventies, has given way to a more optimistic outlook since the mid-eighties. Correctional programming research and development have been relegitimized partly due to indications within the literature of its apparent success.[9] The general literature during this period, however, does not consist of a large number of rigorously controlled studies. Antonowicz and Ross (1994) found that between 1970 and 1991 only 44 published studies met rigorous evaluation standards and 20 of these demonstrated effectiveness.

Although Antonowicz and Ross (1994:98) recognize that their criteria, which include adequate control groups, sample sizes and outcome examination, are more stringent than those employed in other

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[6] In light of the large populations of incarcerated offenders, separating inmates into homogeneous group classifications may alleviate some of the subsequent problems such as overcrowding and burgeoning administrative costs. Successful classification schemes may redistribute lower-risk inmates who would otherwise be in high security to lower security institutions without endangering institutional and public safety while reducing the costs associated with high security incarceration (Bonta & Motiuk, 1990; Proctor, 1994). See also Austin, 1991a; Buchanan *et al.*, 1986; Champion, 1994; Levinson, 1991.

[7] see Task Force on Aboriginal Peoples In Federal Institutions, 1988:24-25.

[8] For example, in the Prince Albert Correctional Centre in 1994-95, 79% of the inmates stayed in the institution less than three months and only 2% stayed over nine months.

[9] see Palmer, 1991.

reviews, they conclude that "[t]wenty effective programs in 21 years indicates that effective programs are truly exceptional". Some reviewers, however, have noted methodological issues which may call into question the exceptionality of effective programs. Palmer (1991), for example, found in his review of meta-analyses and literature reviews of the 1980s that interventions appearing unsuccessful when aggregated and analyzed as a single, broad undifferentiated type (e.g., counselling) demonstrated effectiveness when reviewed individually. However, methodological rigour is actually not as important in evaluating effectiveness as many think.[10]

Others have argued that popular measures of success, most notably recidivism rates, are weak indicators of program effectiveness. Recidivism rates, critics contend, obscure improvements in the individual's general well-being; are unable to gauge those who commit offences but are not caught; and do not account for factors external to the program which influence post-release behaviour (e.g., stable employment). Griffiths (1990) suggests alternative measures of success pertaining to the offenders' adaptation into the community, their family life, and their relative improvement. In general, as Parent (1989) recommends, correctional programs should be evaluated in terms of their intent. Some programs are designed to reduce recidivism while others are not, and should therefore be evaluated accordingly.

Determining program effectiveness is embedded in methodological considerations. Some reviewers[11] insist on stringent methodological standards for judging the acceptability of evaluation research. However, as Palmer (1991:340) notes, most of the research simply does not meet "excellent or near-perfect designs and analyses" but on the "on the surface at least, seem to meet long-established standards of scientific adequacy". The merits of relaxing scientific standards have been identified elsewhere[12] but ultimately, programs without sound evaluation are likely to fade after several years even in the face of high praise and legitimacy, and "[i]n the long run, sound evaluation may be among the surest bases for a program's deserved confidence and survival".[13]

While the resurgence of rehabilitation in the eighties has been based on less than ideal methodological standards of evaluation research, cumulatively, the literature does produce a promising impression of program effectiveness; in some instances it shows recidivism reduction as high as 80 percent. Instead of asking whether rehabilitation works, researchers are now concerned with the specific conditions that are conducive to success.[14] Those factors which have been associated with program ineffectiveness are discussed next.

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[10] Andrews, Zinger *et al*, 1990.

[11] e.g., Antonowicz & Ross, 1994; Quinsey, Harris, Rice, & Lalumiere, 1993.

[12] see Marshall, 1993.

[13] Palmer, 1991:42.

[14] see Palmer, 1991; Gendreau & Ross, 1987; Antonowicz & Ross, 1994.

Program Ineffectiveness

Low correctional intervention efficacy has been attributed to implementation and/or principles. first, correctional officials have been notoriously poor at fully implementing and maintaining programs. The perceived failure of diversion programs, for example, was due not to their fundamental theoretical base but rather to their "abysmal quality" of delivery. Reasons for poor implementation include the primacy of security concerns, general mistrust and suspicion of programs, and insufficient support and involvement from all correctional levels as well as from the community and other external institutions.[15]

Various principles endorsed and practised by correctional programs have also been related to failure. Gendreau, Cullen, and Bonta (1994) report from their literature reviews and documented clinical experience a number of ineffectual program principles. Programs that target low - risk offenders; cater to non-criminogenic behaviour (e.g., anxiety); use traditional Freudian psychodynamic and other nondirective therapies; take traditional medical model or subcultural and labelling approaches; or use deterrence or punishment strategies appear unsuccessful. Other factors related to program failure identified in the literature include program discontinuity between the institution and the community; an inadequate theoretical base; and the indifferentiation of inmates according to individual needs and subsequent inappropriate intervention placement.

Program Effectiveness

The factors related to program effectiveness obviously stem, in part, from the determination of what does not work. Thus, interventions that are structurally linked with the community (i.e., family, schools, employers, social service agencies, neighbourhood organizations and community-based interventions) tend to be more successful because they maintain some continuity of institutional program conditions once the offender is released.[16] Further, given the low level of public understanding of the criminal justice system and its response to criminal offenders,[17] a more informed public would likely increase program acceptability and public participation, especially with respect to community-based corrections. Lastly, jurisdictional diversity necessitates cultural, geographic, socio-economic, and political considerations in correctional programming. The more successful community programs, for example, have significant community input and participation and strive to reflect local customs and practices.[18]

Several principles have been associated with effectiveness of correctional programs. First of all, programs must be properly administered and implemented. All program personnel should be intimately involved in operations, and program contingencies should be maintained in a firm but fair manner. Moreover, therapists should be motivated and receive appropriate training and supervision which, among other things, encourages the modelling of anticriminal attitudes and behaviour. There should

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[15] Gendreau & Ross, 1987; Cormier, 1989; Griffiths, 1990.

[16] see Cormier, 1989; Gendreau & Andrews, 1990; Wexler & Lipton, 1993.

[17] see Canadian Sentencing Commission, 1987.

[18] Griffiths, 1990.

also be a co-operative and supportive climate among correctional and administrative staff who are committed to and supportive of treatment.[19]

A sound conceptual model of criminality is also associated with program efficacy. Such a model determines the process by which the intervention should follow (i.e., intermediate and primary targets) and the techniques that should be employed. Programs taking a social cognitive theoretical approach are the most promising.[20] Social cognitive skills training seeks to correct fundamental reasoning deficits, often characterized by limited, narrow perspectives, egocentricity, impulsivity, and concrete thinking, which are essential to social adaptation.[21] Antonowicz and Ross (1994) report recent social cognitive interventions showing a 60 to 70 percent recidivism reduction in high risk penitentiary inmates, drug-abusing offenders, and high-risk. Furthermore, while behavioural programs have produced mixed results, those incorporating a cognitive component, focusing on attitudes, values, and beliefs that support antisocial behaviour, are more likely to be effective.[22] The literature also suggests that part of breaking patterns of antisocial thought and behaviour includes the disruption of the offender's criminal network by the program and its activities. Indeed, as found, prison programs can be effective if they are isolated from the antisocial prison subculture.[23]

The recognition of individual differences among offenders has produced some promising results.[24] More specifically, offenders differ in risk, needs and responsivity to programs, and they should be matched accordingly with appropriate levels of service.[25] Level of risk has been found to correlate noticeably with program outcome. Generally, more intensive services in terms of time and overall duration should be provided for higher risk offenders although Antonowicz and Ross (1994:101) found no significant difference between high and low-risk offenders in their responses to varying service intensity levels. They suggest, "[S]uccess can be found with both high and low-risk offenders". This may be due to the federal sample who are typically higher risk offenders in Canada.

Programs should also differentiate between criminogenic and noncriminogenic needs, targeting the former. These are dynamic factors known to be related to recidivism such as antisocial attitudes and peer association which can be changed. In contrast, little can be done about static variables like age and

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[19] see Gendreau, Cullen, & Bonta, 1994; Gendreau & Andrews, 1990; Cormier, 1989; Antonowicz & Ross, 1994; Wexler & Lipton, 1993; Wellisch, Anglin, & Prendergast, 1993.

[20] A recent evaluation of cognitive skills training on post-release recidivism among federal offenders found that completion of cognitive skills training significantly increased chances of being granted discretionary release, was most useful for medium and high risk offenders, was successful for offenders completing it in community settings, was most useful for reducing recidivism of sex, violent and drug offenders and least useful for property and robbery offenders, and was useful in reducing recidivism for both aboriginal as well as non-aboriginal offenders (Robinson, 1995).

[21] see Antonowicz & Ross, 1994; Cormier, 1989.

[22] see Antonowicz & Ross, 1994; Palmer, 1991; Gendreau & Andrews, 1990.

[23] Gendreau, Cullen & Bonta, 1994; Antonowicz and Ross (1994).

[24] see Andrews, Bonta and Hoge, 1990.

[25] Proper matching depends on good classification systems. See also Antonowicz & Ross, 1994; Gendreau & Andrews, 1990; Gendreau, Cullen & Bonta, 1994; Gendreau & Ross, 1987.

previous convictions.[26] Lastly, offenders also differ in their responsiveness to certain programs. The style and mode of treatment, therefore, should correspond with the learning characteristics of the offender. This entails matching offender learning styles and personality with the program and the therapist, as well as fitting the therapist with the type of program.[27]

While each of the factors identified above has been individually linked to program effectiveness, their real power lies in their unity and combination. The literature suggests that a multi-faceted approach whereby comprehensive programs address each of the offender's major problem areas in an integrated manner can be very successful. This requires using an array of techniques, as opposed to a single technique, that reflect offenders' individual characteristics. Finally, interventions should be adequate in duration and if possible, administered in an environment that is isolated from the general population.[28]

Female Offender Needs

There is a paucity of literature regarding the effectiveness of various prison and community-based interventions for female offenders. In addition, as Kendall (1993a) observed in her review of the literature on therapeutic services for women in prison, very little information exists about the diversity of incarcerated women with respect to race, social status, physical health and sexual orientation. Research on correctional interventions tend to be androcentric. The addictions research, for example, has traditionally been oriented toward white males, ignoring gender differences in drug use such as women tending to use more than one drug.[29]

Correctional classification systems too may be inappropriate for the female inmate population. Schafer and Dellinger (1993), for example, report that jail classification systems have been applied almost exclusively to men, with women simply being classified as a single category. Moreover, they found major demographic differences between female and male offenders in jail, such as women being more likely to have children and to be unemployed at the time of arrest, indicating that classification schemes based on men would be inappropriate for women. Data from the United States also reveals that prison health services for women are inadequate.[30] Kendall's (1993b) program evaluation of women's therapeutic services at the Prison for Women has highlighted other deficiencies in services for incarcerated women.[31] These include a lack of choice in program participation, of therapists, and of programs which reflect their needs (e.g., substance abuse, cultural, survivor abuse, anger management). There is also a lack of post-release assistance that links released offenders with community services.

The inadequacies of correctional programming are based in part on the special or different needs of women offenders. Some of the needs identified in the literature include a need for greater autonomy in prison activities and program decisions; developmental and practical skills training (e.g., assertiveness

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[26] see Bonta, 1995; Antonowicz & Ross, 1994; Gendreau, Cullen & Bonta, 1994; Gendreau & Ross, 1987.

[27] op cite 14.

[28] op cite 9.

[29] see Austin, Bloom & Donahue, 1992; Kendall, 1993a; Wellisch, Anglin, & Prendergast, 1993.

[30] see Ingram-Fogel, 1991; Wellisch, Anglin, & Prendergast, 1993.

[31] see Shaw, 1991 as well for information about the needs of federally sentenced females in Canada.

and vocational training); and increased contact with children.[32] In addition, correctional programming and practitioners should be sensitive to the life experiences of women, which can often involve situations of disempowerment, physical and sexual abuse, drug abuse, sexism, racism and low socio-economic status.[33]

The current program response to the concerns about women offenders has been based on principles of feminist therapy. Feminist therapy seeks to contextualize women's criminal behaviour within their life experiences and the society in which they live. In doing so, it aims to empower women by assisting them in identifying and increasing their strengths and abilities to direct their own lives.[34] The limited research on individual and group therapies rooted in principles of empowerment has shown some success within prison conditions in improving women's sense of worth, self-concept, and control, and their prison adjustment and coping. Moreover, as Kendall (1993b) found in her survey of inmates in the Prison for Women, there is a general satisfaction with therapeutic groups (e.g., Peer Support Team) that emphasize self-empowerment, active participation, and connection with others. Unfortunately, long-term data on female offenders' post-release behaviour is unavailable.

3. Aboriginal Treatment/Programming Approaches

For the past two decades in Canadian corrections aboriginal offenders have been identified as a group with special needs. This has come about for two reasons. The first is the over-representation of aboriginal people as offenders in the correctional system; the second is the recognition of the special status of aboriginal people and of aboriginal culture within the Canadian state. The assumption that disruption and loss of culture are at the heart of the over-representation phenomenon has led to the belief that a renewal in culture is the solution to the over-representation problem. This has been strongly influenced by the politics of self-government, where cultural distinctiveness is an integral component.

(a) The Philosophy of Aboriginal-Specific Programs:

Legal rights of aboriginal people in Canada as set out in the Constitution Act, 1982, the recognition of special needs of aboriginal offenders, and social and cultural isolation among aboriginal inmates underscore the creation of aboriginal-specific programs.[35] These initiatives were preceded by the Native inmate self-help movement in institutions which resulted in the formation of Brotherhoods and Sisterhoods. The contemporary Native Liaison Program which operates in provincial, territorial and federal institutions found its antecedents in the Native Liaison Support System of the early 1970's and grew into a network of organizations and

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[32] While correctional practices in the United States and Canada do not sufficiently address the parental needs of women offenders with respect to seeing and caring for their children (e.g., Shaw, 1991), some nations have a fairly liberal policy regarding babies and children in prison (Biles & Harding, 1994). In Bangladesh, for example, female inmates are allowed to keep their children for up to 6 years of age.

[33] op cite 17.

[34] ibid.

[35] Birkenmeyer & Jolly, 1981:22.

agencies across Canada. The major aboriginal activity areas are community supervision and support, community outreach, counselling, case management facilitation, cultural sensitization, healing, cultural affirmation and training/education.[36]

The CSC aboriginal program approach can best be described as cultural/spiritual in nature, with an added emphasis on facilitating the release of aboriginal offenders and connecting them to communities. Underlying the approach is the belief that unique solutions are required to reflect the unique cultural backgrounds of aboriginal inmates, and that loss or lack of cultural roots and identity are the primary causes of involvement in the criminal justice system. Most provinces and territories have followed the same path in developing and implementing programs for aboriginal inmates in their institutions. The emphasis on the cultural and spiritual has resulted in a group rather than an individual approach. Aboriginal-specific programs, such as bush camps and Community Residential Centers, have generally adopted the same philosophy.

(b) Policies:

Federal

In 1985 in recognition of the importance of traditional culture and values a policy on Aboriginal spirituality was set out by CSC, and in 1987, a policy on "Native Offender Programs" was instituted. In the same year the CSC established the Task Force on Aboriginal People's in Federal Corrections to examine the process which aboriginal offenders go through from admission to warrant expiry date. It also examined offender needs and how to improve their chances for social reintegration. With the submission of the final report, significant efforts were made to develop aboriginal programming and services on a national basis. The Task Force on Community and Institutional Programming (1990), supported the goals of the Task Force of Aboriginal Peoples in Federal Corrections.[37]

The most recent Commissioner's Directive (CSC, 1995c) on Aboriginal Programming has five policy objectives relating to the cultural practices and individual rights of aboriginal offenders. It also contains a list of institutional responsibilities for ensuring these policy objectives are met. The Directive dictates that aboriginal-specific programs shall replace regular programs under prescribed conditions such as where other offenders are lacking sensitivity to aboriginal offenders, where language is a factor, and where there are differences in cultural approaches to learning. Aboriginal initiatives are, however, organized on an institution-by-institution basis and usually co-ordinated at the regional level. There is, as a result, considerable institutional variation in programs and program delivery. The roles and responsibilities of those designated to deliver programs such as liaison workers and spiritual advisors are not always clearly defined.[38]

Under the terms of the *Corrections and Conditional Release Act (1993)*, CSC shall "provide a range of programs designed to address the needs of [Aboriginal] offenders and contribute to their

[36] Goss *et al.* 1992.

[37] ibid.

[38] ibid. 7-9.

successful reintegration into the community".[39] This Act is the only piece of correctional legislation in Canada which provides special enabling provisions for the delivery of aboriginal corrections programs and services. Care and custody of aboriginal offenders can be transferred to an aboriginal community or organization with the Minister's approval.

Both CSC and the National Parole Board have Advisory Committees which advise the respective services on aboriginal issues. Both have mission statements and policies which address issues relating to the social and cultural differences of offenders. In 1985, CSC created the Division of Native and Female Offender Programs. It also established the office of Corporate Advisor, Aboriginal Correctional Programs, to monitor and act as a catalyst for aboriginal programs and to liaise with communities. CSC expanded the Commissioner's Directive on Aboriginal Offender Programs to include protections for cultural expression. CSC is also in the process of collecting information on aboriginal inmates for purposes of needs identification and program planning. The purpose of the National Symposium on the Care and Custody of Aboriginal Offenders (1995) was to acquaint aboriginal communities with the reintegrative and other needs of offenders. Because of limited evaluation material, however, it is difficult to adequately assess the impact of aboriginal policies and programs.

Provincial/Territorial

Some jurisdictions (e.g. Ontario, Alberta, B.C.) have designated aboriginal justice branches or directorates and may even have policies which emphasize the needs of certain aboriginal groups, such as those residing in the north. By and large, aboriginal-specific institutional and community correctional programs for aboriginal offenders in provinces and territories follow the same general philosophy as at the federal level. The differences lie in the number of aboriginal-specific programs offered. Some jurisdictions have also adopted more of a generalist approach to programming, others have adopted a more cultural, aboriginal-specific approach.

c) Programs:

Aboriginal-specific programs offered to aboriginal offenders within CSC regions include among others, Native Liaison Services, Traditional Spiritual Practices, Substance Abuse Treatment, Aboriginal Literacy, Aboriginal Cultural Skills, Native Life Skills Training, Sacred Circles, Native Awareness, Community Reintegration, Sweat Lodge Ceremonies, Aboriginal Language and Family Violence programs. Not all programs are in all regions. For example, a New Life Program is offered at Edmonton Institution, Ontario Region has conducted aboriginal pilot projects at Frontenac and Collins Bay institutions; and a Native Studies Program is in place in Stony Mountain. CSC has also entered into an agreement with the Native Courtworkers and Counselors of B.C. for the training of twenty-six sex offender counselors in the hopes of providing a culturally appropriate response.[40]

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[39] Hosek & Martin, 1993.

[40] CSC and the Native and Counseling Association of B.C. are collaborating to initiate an Aboriginal Sex Offender Counselling Training Program in the Pacific Region. Twenty-six aboriginal sex offender counsellors (including six CSC personnel) will be trained under the supervision of a registered psychologist (Contact, 1995).

In 1989, the Task Force on Federally Sentenced Women recommended the creation of a Healing Lodge for federally sentenced aboriginal females to be located in Saskatchewan on the Nekaneet Reserve. The site selection followed the Task Force report. Planning for the 30 bed establishment was undertaken jointly by CSC and representatives of the band. The central program of the Healing Lodge, which officially opened in September 1995, is aboriginal healing, where traditional practices are used. It incorporates the concept of teaching by example and role modeling. Staff will participate in a full alcohol abuse program (as alcohol abuse is a major problem for aboriginal females offenders), and a training phase, which focuses on aboriginal-specific intervention strategies and maintaining one's emotional balance and mental health.[41]

General programs offered by provincial/territorial corrections include literacy, substance abuse, anger management, job training, life skills and education programs. In some jurisdictions these may be aboriginal-specific but this is not uniformly the case. Sometimes aboriginal components are attached to the more general programs, such as those for batterers and sex offenders. In some provinces such as Ontario, Native Inmate Liaison Workers deliver programs. Aboriginal-specific approaches include land-based, sweat lodge, healing circle, elders, prison liaison, aboriginal female, spiritual, visitation, counselling, and traditional remedies programs, among others. Again, these are not uniformly in all institutions, and some jurisdictions have much more extensive aboriginal - specific programming than others.

Community Programs

Many jurisdictions have policies regarding the hiring of aboriginal staff and cross-cultural training of non-aboriginal staff working with aboriginal offenders. General programs include fine option, restitution, community service, bail supervision, intensive probation and attendance centres. These are not uniformly in all provinces and territories. Some programs are aboriginal-focused, such as reserved-based community participation programs in Manitoba. There is also wide diversity of aboriginal-specific community correctional programs. These include the Forensic Behavioural Management Clinic run by the Native Clan Organization in Winnipeg for the assessment and treatment of sex offenders; native justice workers in B.C., the Blood Tribe Corrections program, the Metis Nation Elders Visitation program, the Yellowhead Tribal and Tsuu T'ina Community Corrections programs in Alberta, and the Native Community Corrections Workers and native family violence services in Ontario. There are some aboriginal-specific Community Correctional Centres - Stan Daniels in Edmonton, Waseskun House in Montreal, Aims House in Vancouver and Community Resource Centres in Red Lake and Fort Albany in Ontario. All provide space for both federal and provincial offenders. There are a variety of Community Justice Workers who assist with bail, probation and parole supervision.

Program Evaluations

Despite the length of time aboriginal programs have been offered, there has been little monitoring of the delivery of programs. Nor have there been program reviews or evaluations and follow up with individuals who have participated in and/or completed them. Notwithstanding the absence of

[41] Federally Sentenced Women Program, CSC1994.

monitoring and evaluation, there is an entrenched belief that "aboriginal inmates respond more readily to culturally relevant programs and services than to general programs and services".[42] The evidence for this is often anecdotal and often put forward by the people who write policy or deliver programs. At the same time, some inmates claim to have benefited considerably from the cultural and spiritual programs.[43] However, on release there has been little follow-up regarding involvement in similar programs on the outside or on re-offending. Grobsmith (1989:295) argues that in the U.S. "the increase in popularity of indigenous cultural activities for prison rehabilitation is occurring nationwide, and its effect on lowering recidivism rates of Native American offenders will need to be systematically evaluated over the next few years". This is also true in Canada.

Two aboriginal-specific institutional programs that have recently undergone preliminary evaluations are the Native Offender Substance Abuse Pre-Treatment Program and the Aboriginal Offender's Pilot project. The first is a pre-substance abuse treatment program designed exclusively for native offenders and delivered in an institutional setting. The second is an institutional follow-up of offenders who participated in cultural programs. Neither evaluation involved follow-up on release. They did, however, provide useful information about the programs, primarily from the perspective of participants and program personnel. One of the most important findings was that the Substance Abuse Pre-Treatment Program attracted aboriginal offenders with very serious alcohol problems.

The evaluation of the Aboriginal Offender's Pilot project in the Ontario Region also shows promising results. It concluded that specific programs and activities had a significant impact in changing offender's attitudes (particularly toward their culture) and behaviour and created a safer institutional environment. It concluded further that cultural awareness made workers more effective, and that aboriginal employees were better able to meet the needs of aboriginal offenders. However, the evaluation cautioned that much still needs to be done in co-ordination of services, programming and the development of community facilities.

The evaluations of these two programs provide support for Grobsmith's contention that culturally-specific alcohol programs will be more effective for aboriginal offenders than mainstream ones like AA. The limitation of the evaluations is the lack of follow-up after the completion of the program or post-release. Thus, it is difficult to know if cultural content or other aspects of the program (i.e., the fact that all participants were native so the degree of comfort was high; the program was non-threatening in terms of knowledge or competition with other participants, etc.) produced the results. It is also important to determine if greater awareness of culture and improved institutional behaviour translate into improved behaviour on release.

In Edmonton, the Stan Daniels Correctional Centre (CRC) for federally and provincially released aboriginal offenders has also been evaluated. Ex-residents, in addition to staff and residents, were interviewed about their perceptions of staff and programs. The objectives of the program are to assist offenders identify their needs, and to ensure offenders adhere to the conditions of release. While residents generally approved of the atmosphere and the aboriginal focus of the Centre, it is

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[42] CSC, 1991:2.

[43] see Moon, 1995:A4.

unclear how much this reflects having a "therapeutic community" to which they belong and how much it reflects the cultural/spiritual components of the program. Concerns expressed about the Centre were that there was not enough assistance with employment, programs or family and community involvement. Although ex-residents were interviewed, there is no follow-up information on re-offending.

Summary and Considerations

The extent to which the existing aboriginal-specific programs accommodate findings about program effectiveness for the general offender population such as correcting fundamental reasoning deficits through social cognitive skills training, recognition of individual differences among offenders, more intensive services for higher risk offenders, corresponding style and mode of treatment to the learning characteristics of offenders, the integration of programs to address each of the offenders' problem areas, proper implementation and administration of programs, and interventions that are structurally linked with the community, is an empirical question for which no clear answer exists. Nor is there adequate information about the degree to which aboriginal-specific programs incorporate components of effective approaches for females, substance abuse and sex offenders.

There is also a lack of information about the general value of mainstream programs for aboriginal offenders. For specific problems such as alcohol abuse, some support exists for the adoption of a culture approach. Grobsmith (1989) cites a number of American studies which claim success in achieving sobriety by using cultural rather than the standard AA approaches, although no information about evaluation questions or methodology is presented. Substance abuse, particularly of alcohol, is a major criminogenic factor for aboriginal offenders, and it seems clear that any successful correctional program must address this area. Beyond substance abuse and recent findings about the value of cognitive training for federal aboriginal offenders, however, it is not clear which should be the "core programs" for aboriginal offenders, nor how best to intervene with them. The end result is that important issues about aboriginal-specific programming remain unanswered.

One of these issues is the meaning of "culturally appropriate" given the diversity of the aboriginal experience in Canada and of aboriginal offenders themselves. This leads to further questions: Is there a common cultural denominator to which all aboriginal offenders can subscribe? If so, how and by whom is this cultural content determined? How and by whom is the legitimacy of spiritual healers, elders and other deliverers of spiritual programs established? Are practices specific to one cultural group, such as sweat lodges, widely accepted by aboriginal offenders of different cultural groupings? Do aboriginal offenders who have been exposed to spirituality in the institutions return to families/communities who share these spiritual values?

A third issue is the needs of offenders. There is some evidence from existing research that aboriginal inmates are more dysfunctional than non-aboriginal inmates on a number of personal

and socio-economic dimensions.[44] In an article on alternative treatment approaches for aboriginal sex offenders, Ellerby (1995) writes "While most of the offenders we see present with multiple problem areas, this has been particularly apparent among the aboriginal offenders we have assessed and treated. Issues such as substance abuse, histories of abandonment, dislocation, victimization, and identity issues are prominent and likely to contribute to the observed differences in treatment outcome". Should programming pay more attention to these differences and emphasize preparing aboriginal offenders for programs, whether aboriginal-specific or mainstream? One reason for the high attrition of aboriginal offenders from, or their refusal to become involved in mainstream programs, may be their lack of preparation and reluctance to participate in them. Are needs of aboriginal offenders primarily cultural or do they reflect a degree of personal dysfunction more extreme than for the non-aboriginal offender? Does a policy of "culturally-specific" programming inhibit aboriginal participation in mainstream programs which might be beneficial?

Other important issues include: How much does aboriginal-specific programming reflect the desires and needs of aboriginal offenders as identified by them and how much does it reflect a larger aboriginal political/service delivery agenda? Does the group approach effectively address individual needs and if so, which components and how? How well defined are the goals and objectives of aboriginal-specific programs? How integrated are aboriginal and mainstream programming? What are the benefits/costs of this kind of integration? Do aboriginal-specific programs create racial tensions in institutions? What proportion of aboriginal offenders participate in aboriginal-specific programs? Why do some aboriginal offenders not participate?

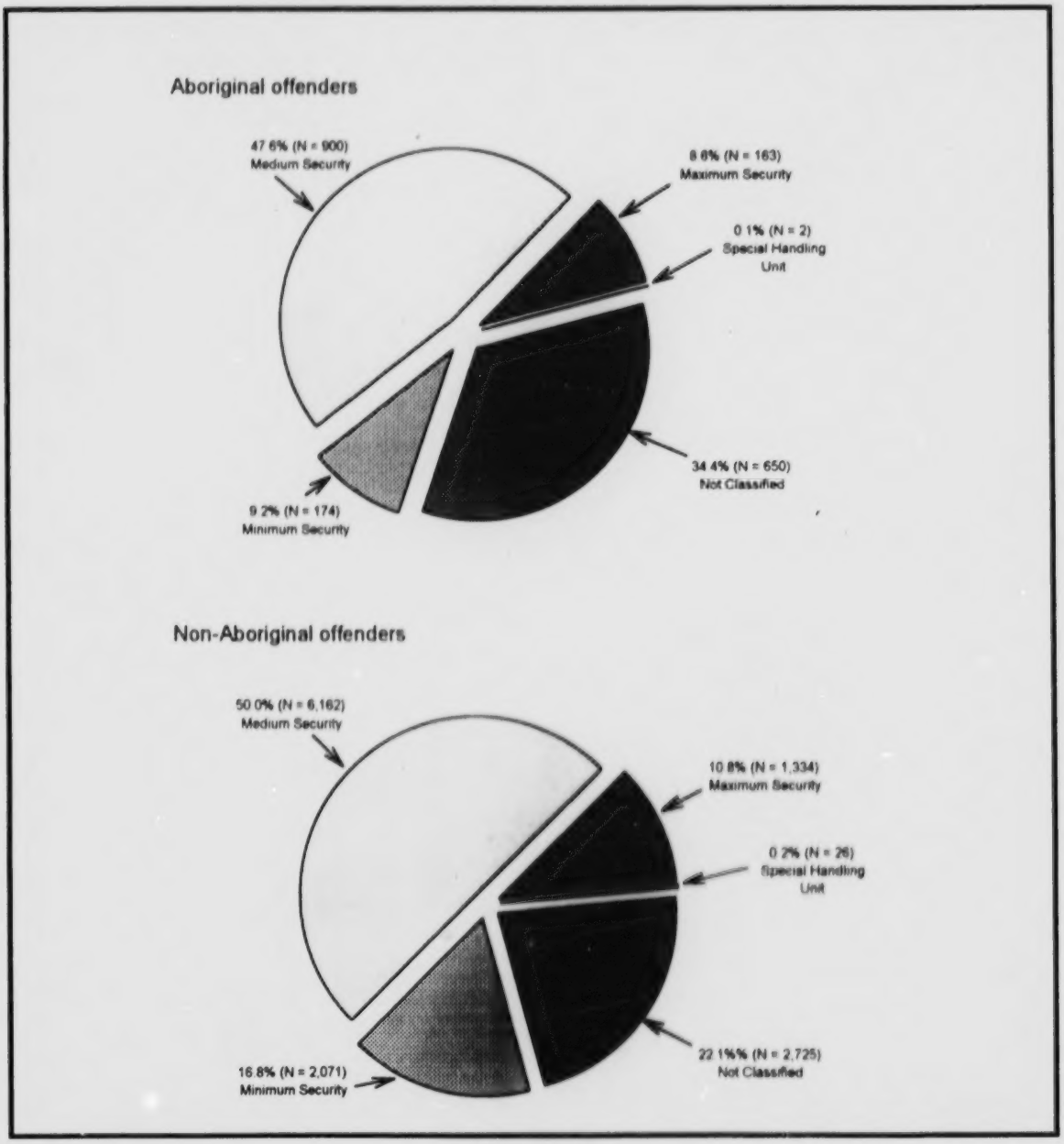
There is also the issue of the commitment of institutions to aboriginal-specific programming. For example, the review of the literature on program effectiveness suggests that programs should be properly administered and implemented; therapists should be motivated and well-trained; and there should be a co-operative and supportive climate among correctional and treatment/program personnel. Program ineffectiveness, on the other hand, has often been the result of the primacy of institutional and security concerns, general mistrust of programs, and insufficient support from all correctional levels, the community and external institutions. Does isolating aboriginal programs make it easier to underfund and neglect them? Has there been adequate monitoring of the delivery and quality of aboriginal-specific programming? What are the attitudes and concerns of institutional administrators toward aboriginal-specific programming and how does this vary, if at all, by make-up of inmate population? Without addressing these questions there is the potential for programming to be piece-meal and for disparity in access to these programs for aboriginal offenders.

Evaluations of the impact of cultural specific and/or mainstream programming on institution and release activities of aboriginal offenders should, at a minimum, explore the length and type of cultural and/or other programming to which the offender is exposed and evaluate the following accordingly: whether objectives of each program have been met; offender interest and involvement in programs; offender's institutional behaviour with participation in programs; linking of cultural programs with other institutional programs such as education and employment; re-

[44] see LaPrairie, 1992; Planning Branch, 1975; Muirhead, 1982.

offending over various time periods; potential for inmate to continue programs when released (i.e., the availability of external programs); the offender's ability to integrate into family and community; community support and recognition of cultural/spiritual change in offender; community support for content of cultural/spiritual programming; and offender participation in programs such as employment, education, recreation etc.. Evaluations of cultural-specific and other programs for females in Healing Lodges and other correctional facilities, should be measured against their own specific program objectives as well as against the needs of females inmates as identified in the general literature – those of education and training, relationships with children, drugs and alcohol, and exposure to emotional, physical and sexual abuse.

Figure V.1 Security Classifications for Aboriginal and Non-Aboriginal Federal Offenders, 1995



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PART VI. CORRECTIONAL AND PERSONNEL INMATE SURVEY RESULTS

PART VI: CORRECTIONAL PERSONNEL AND INMATE SURVEY RESULTS

The results of two of the surveys conducted during the course of this research - correctional personnel and aboriginal inmates - are reported below. There is variance in perceptions and opinions about programs and needs between correctional personnel and inmates, and among some groups of inmates themselves.[1] This suggests there is not the degree of consensus about the focus and direction of aboriginal programming or the homogeneity of aboriginal offenders as are commonly believed.

1. Correctional Personnel

Approximately 150 federal, provincial and territorial correctional personnel were surveyed about various aspects of aboriginal corrections. The majority of responses came from people working in correctional institutions – 41% from federal and 57% from provincial corrections. Respondents had worked an average of 15 years in corrections, mainly in aboriginal and non-aboriginal programs, and while most had worked with aboriginal males, one-third had experience with both males and females. They represented all provinces and territories except the N.W.T., but the lowest response rate was from the Atlantic provinces and the Yukon. Perceptions of problems facing offenders and their views concerning the most useful programs for addressing these problems were elicited.

The analysis of the correctional personnel questionnaire will be broken into the following sections: similarities and differences among offenders; assessment and classification of inmates; programs, services and needs (institutional and release and post - release); and, reintegration.

Similarities and Differences Among Offenders

When asked "What are the similarities between aboriginal offenders and non-aboriginal offenders", the responses in order of importance were as follows:

1) drug and alcohol problems/addictions (25%),
2) poor upbringing (15%)
3) commit similar offenses (13%)
4) lack of education (12%)
5) poverty (10%).

When asked about the differences between aboriginal and non-aboriginal offenders, the major responses were:

1) 22% of the respondents stated that aboriginal offenders were more shy/non-assertive;

[1] It should be remembered that the inmate surveys reflect responses from only three provincial and three federal institutions and all in the prairie provinces.

2) 16% indicated there was a culture difference;

3) 14% stated aboriginal offenders had more substance abuse problems;

4) 12% thought aboriginal offenders have more family problems and the remaining respondents identified other problems.

When asked about the differences among aboriginal offenders, 50% thought culture and beliefs, 14% languages, and 11% tribes or clans distinguished aboriginal offenders. Eighty-eight percent (88%) believed differences between aboriginal and non-aboriginal offenders were important to identify for programming purposes. Seventy-one percent (71%) thought inmates adjust differently to incarceration, and 66% felt there were different adjustments to community corrections for aboriginal and non-aboriginal offenders.

When asked to identify the best way to distinguish similarities and differences among offenders for purposes of treatment/programming, 41% of respondents said better intake assessment, 28% thought there was a need to consult with elders and/or communities, 19% felt offenders should be consulted.

Assessment and Classification of Inmates

Assessment and classification questions evoked some interesting responses. When asked "Are aboriginal offenders accurately assessed at intake regarding their program needs", 55% of respondents replied in the positive; 10% said sometimes, and 32% said no. Of respondents who felt aboriginal offenders were not accurately assessed, 31% believed elders should be involved in assessments, 29% thought assessment should involve a traditional component, and 20% believed a better assessment was generally needed. Sixty-nine percent (69%) thought aboriginal offenders were properly security classified. Eighty percent (80%) did not believe aboriginal offenders were incarcerated for less serious offenses than non-aboriginal offenders.

Programs, Services and Needs

Institutional:

Respondents were asked about problems and needs of offenders, the most useful programs, and program delivery. When asked "What are the greatest problems facing all offenders", the responses were as follows:

1) lack of education (18%)

2) lack of job skills (15%)

3) lack of family support/poverty (15%)

4) drug and alcohol problems (13%)

5) lack of self-esteem (12%).

Only 5% of respondents considered beliefs and values the greatest problem.

In posing a similar question about the greatest problems facing aboriginal offenders, respondents reported:

1) lack of family support/poverty (17%)
2) lack of education (16%)
3) lack of self-esteem (12%)
3) drug and alcohol problems (12%)
4) lack of job skills (12%)
5) lack of traditional values (8%).

Six percent (6%) reported lack of beliefs and values, 3% discrimination and 2% language.

When asked "Which programs are most useful for aboriginal offenders?" the findings are as follows:

1) cultural/elder programs (43%)
2) anger management/living skills/self-awareness programs (21%)
3) alcohol treatment programs (18%)
4) education programs(10%).

The major gaps for aboriginal offenders were considered to be education, lack of community involvement/commitment to offenders and unqualified staff delivering programs. Generally, there was an emphasis on the need for qualified staff to be delivering all programs. When asked if aboriginal inmates were properly assessed in regard to their needs, only 55% gave a positive response.

When asked about the most useful programs for non-aboriginal offenders, respondents replied:

1) anger management/living skills/ self-awareness (29%)
2) drug and alcohol treatment (24%)
3) counselling (14%).
4) education (13%).

Only 5% considered cultural/spiritual programming most useful for non-aboriginal offenders.

When asked about the most valuable programs for aboriginal offenders, 48% thought aboriginal-specific/cultural programs most important and approximately the same percentage thought these programs changed the behaviour of aboriginal offenders. However, when asked which programs reduced re-offending for all offenders, only 16% considered aboriginal-specific/cultural programs most effective. The emphasis for all offenders was on cognitive skills, substance abuse, anger management, skills and education programs. Two-thirds of respondents thought mainstream programs useful for aboriginal offenders, and 80% thought aboriginal programs would be useful for non-aboriginal offenders. The reasons given for aboriginal offender reluctance to participate in

mainstream programs were personal choice and the fact that the programs were acultural. Over one-third thought non-aboriginal offenders were not welcome in aboriginal programs.

One-quarter of respondents considered the fit between programs and needs to be poor; percent (44%) thought it was good or fairly good, and 33% thought the fit was only "O.K.". Nearly two-thirds believed there were differences in the way various groups use institutional programs, primarily because different cultures need different programs. Sixty-seven percent (67%) thought aboriginal offenders need culture awareness programs. When asked, "Do aboriginal-specific programs change the behaviour of offenders", 45% responded in the affirmative, 38% said sometimes, and 15% no. However, only 29% of respondents thought cultural/spiritual programs changed the behaviour of non-aboriginal offenders and 45% said sometimes. Two-thirds of respondents believed mainstream programs useful for aboriginal offenders. Eighty percent of respondents considered aboriginal programs useful for non aboriginal offenders.

When asked about necessary changes for aboriginal offenders in institutions, nearly 76% of respondents replied "better programs". This suggests that respondents felt programs could and should be improved which underscores the need for better monitoring and evaluation of existing programs. A higher proportion (76%) of respondents felt mainstream staff were better qualified than aboriginal program staff (61%). However, there was considerable support (76%) for the concept of aboriginal staff delivering programs for aboriginal offenders.

Release and Post - Release:

Fifty-three percent of respondents believed aboriginal offenders are released at the same rate as non aboriginal offenders. Of those who considered release more difficult for aboriginal offenders, 40% felt it was because there was no community support, 18% because aboriginal offenders committed more violent crimes, 18% thought aboriginal offenders were not assertive enough, and 15% believed it was because of lack of participation in programs. The groups facing the most difficulty with release are violent and sex offenders, in other words, high risk offenders and those without community supports.

Seventy percent (76%) of respondents believed there was a difference between aboriginal and non-aboriginal offenders in their ability to formulate release plans. When asked about changes to improve the release of aboriginal offenders, the responses were as follows:

1) more community input (42%)
2) more community resources (20%)
3) greater involvement of elders (12%)
4) more post-release treatment (10%)
5) more options for offenders (10%).

Twenty-four percent of respondents thought a community reintegration program the most useful pre-release program for aboriginal offenders, 20% suggested a drug and alcohol treatment program, 18% a release prevention program, and 12% cultural programs.

Reintegration

What accounts for a successful release? Forty-one percent (41%) of respondents considered a successful release to occur when the offender is reintegrated, 23% when the behaviour of the offender changed, 15% when offender continued to get help, and 12% when offender had some plan or intention to reintegrate. Three-quarters considered substance abuse, anger management, sex offender treatment, cognitive skills, and education programs most useful in reducing re-offending. Only 17% identified aboriginal-specific programs.

For respondents, the most effective way for aboriginal offenders to achieve community re-integration is through support groups (40%), support from the band (12%), and having more resources (12%). The best way for an offender to achieve re-integration within the family is through family support (66%) and family counselling (25%). In order to improve reintegration of offenders, 43% of respondents felt the community should help identify and develop resources in response to offender needs, 20% thought the community should work with offenders, 35% felt communities should accept and support offenders.

2. Inmate Survey

Responses were received from 502 male aboriginal offenders in the three federal and three provincial prairie institutions to which questionnaires were sent - 252 from federal and 250 from provincial institutions.[2] An analysis of the responses follows. The general and the federal and provincial data are presented, followed by breakdowns of the sample by major residence of respondent (aboriginal, non-aboriginal and combination communities), education, age groups and number of times incarcerated, where significant[3].

Background

Seventy-five percent (75%) of respondents were Status Indians, 17% Metis, 9% non-Status and .4% Inuit. While 66% of respondents were originally from aboriginal communities, only one third had spent most of their lives on reserves, and another third in a combination of places. One quarter had spent most of their lives in cities and the rest (15%) in rural areas or small towns. More of the Status Indian group and federal offenders 18-23 years of age had spent the majority of their lives in aboriginal communities, but generally more inmates 18-29 were from non-aboriginal communities, and fewer were from a combination of communities. More of the non-Status/Metis group had also spent the majority of their lives in non-aboriginal communities.

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[2] When reading findings about programs it is important to remember that variation exists among institutions in the range of programs offered. For example, the three federal institutions generally had more aboriginal-specific programs. However, all institutions had employment, education, life skills, addiction programs. There is variation in more specific programs such as impaired driving programs, family visits, etc.

[3] Any differences identified in this section are statistically significant.

Provincial offenders were significantly younger and had less education[4] than federal offenders. Inmates who had spent most of their lives in aboriginal communities also had less education.

History of Incarceration

Three-quarters of the sample had a previous incarceration but provincial offenders had significantly more - 69% had 3+ incarcerations as compared to 50% of federal offenders. Significantly more provincial offenders had their first incarceration in a youth facility as did those 18-23 years of age and those with 3+ incarcerations. More inmates who had spent their lives in combination communities had been incarcerated 3+ times and had their first incarceration in a youth facility. At the time of the survey, more federal inmates who spent their lives mainly in aboriginal communities were incarcerated for the first time. Nearly 70% of all inmates had served previous sentences in provincial institutions but significantly more provincial offenders had done so. One third of federal offenders had spent previous sentences in federal institutions as compared to only 5% of the provincial group.

Needs

In the questionnaire a distinction was made between greatest needs and more general needs. Employment and education were identified as their greatest need by the nearly two-thirds of all respondents. Employment as the greatest need was particularly significant for young (18-23) provincial inmates. Education and employment were followed by spirituality, culture, lifeskills, and reading as the greatest need. More federal than provincial offenders identified culture and spirituality as general needs. This may reflect the greater availability of these programs in federal institutions. More inmates from aboriginal communities, younger inmates and those incarcerated for the first time identified education and reading as needs, more from combination/non-aboriginal communities and federal offenders 30+ years of age identified spirituality as a need. More provincial inmates with 3+ incarcerations considered spirituality a need. More older provincial offenders (36+) identified alcohol and drug treatment as their greatest need; more federal inmates from mainly aboriginal communities considered education their greatest need. Those with less education were more likely to believe education and employment were their greatest needs.

Identification of Problems/Needs

Fifty-eight percent (58%) of all respondents identified having alcohol problems and 37% family problems. Generally more of the older group who spent most of their lives in aboriginal communities said they had alcohol problems, and this was particularly significant for provincial inmates. When asked if they felt their needs had been properly identified, 55% of all respondents said caseworkers and 50% said aboriginal workers had identified all or some of their needs.

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[4] The education differences may be accounted for by the fact that federal offenders may have received more education in the institutions as program findings suggest. Significantly more federal than provincial offenders claimed to have participated in 'a lot' of educational programming. The longer time spent in federal institutions also facilitates the acquisition of education.

More federal than provincial respondents said aboriginal workers identified their needs - nearly 60% as compared to 41%. Only 54% of federal offenders agreed with their formal assessments, 32% felt they were accurately security classified (generally fewer older federal inmates believed this), and 32% considered their needs were properly dealt with in the institution. However, nearly a third in each category also had no opinion which suggests that many may not have been assessed or classified at the time of the survey. Fewer of the 24-29 and 36+ groups believed their needs had been met. Fewer older, federal inmates who had 3+ incarcerations felt their needs had been met or they had received useful treatment in institutions. Those with less education were less likely to think their needs had been adequately identified.

Participation in Institutional Programs

More inmates participated 'a lot' or 'sometimes' in alcohol than in any other programs and more older than younger inmates participated; however, those with 3+ incarcerations participated less than those with one or two. 'A lot' or 'some' participation in programs ranged from 67% in alcohol/drug, 66% in spirituality/cultural, 57% in job placement, 56% in education, 53% in sweat lodges, 43% in literacy, 42% each in group counselling and life skills, 40% in individual counselling, 48% in 'other' aboriginal and 56% in other general programs. More federal offenders from aboriginal communities with one or two incarcerations participated 'a lot' in education programs; more federal offenders from non-aboriginal and combination communities participated in job-placement programs (which may reflect the recognition of enhanced job opportunities outside reserves). Except for job placement and other general programs where there were no significant differences between the two groups, more federal offenders participated 'a lot' in all the other programs. The difference in participating 'a lot' may reflect the fact that federal offenders spend longer periods of time in the institutions and are able to see positive results from programs. Provincial inmates with 3+ incarcerations are less likely to participate in programs even though all 3+ inmates felt less left out of programs than those incarcerated for the first or second time. Those with less education are less likely to participate in individual counselling programs.

More inmates from aboriginal communities did not participate in non-aboriginal programs because of shyness and feeling left out of programs. Fewer of the younger groups (18-29) in federal institutions participated in cultural/spiritual programs, sweatlodges, group or individual counselling as compared to the older inmates. Age differences were less extreme for participation in alcohol/drug programs. Fewer federal inmates who spent their lives mainly in aboriginal communities participated in group counselling.

Perceptions About Program Participation

Forty-three percent (43%) of respondents said they were interested in participating in programs only if they were aboriginal-specific but when asked if they were interested in any programs that met their needs, 88% of the total sample said they were. More inmates from combination/non-aboriginal communities would participate in any program that met their needs as compared to those from aboriginal communities. The greater reluctance of inmates from aboriginal communities may be their shyness, feeling left out and/or concern about education and reading skills which may be required in programs. More federal inmates from combination communities

felt more programs were required for aboriginal inmates whereas more from non-aboriginal communities felt all inmates needed more programs. Significantly more inmates from aboriginal communities believed there were enough programs for aboriginal inmates, although overall only 45% of the sample believed this. More of the group who had been incarcerated 3+ times felt additional programs were required.

Interestingly, the majority of offenders did not say they were too shy to participate in, or felt left out of participating in programs that were not aboriginal-specific. However, one quarter of federal inmates said they were discouraged by staff from participating in programs that were not designed for aboriginal inmates, but 40% would not give an opinion to this question. Two-thirds felt non-aboriginal offenders could benefit from aboriginal programs, and 73% felt aboriginal offenders could benefit from general, non-aboriginal specific programs and that participation in programs should depend on what one needs. This latter view was held more strongly by provincial than by federal offenders, and by those with more incarcerations. However, only 33% of offenders felt the institutions provide all the necessary programs and nearly three-quarters felt that institutions require many more programs. This view was especially prevalent among provincial offenders and those with more incarcerations, fewer of whom also believed they received useful treatment in the institution. More young federal inmates and those less educated believed there were enough programs for aboriginal offenders.

Program Delivery

The vast majority of inmates (82%) from both types of institutions said that aboriginal people from the outside come into institutions to deliver programs. Twice as many federal as provincial inmates said aboriginal programs in their institution were delivered by aboriginal people. While well less than half of the federal respondents said aboriginal staff understand their needs (41%), were well selected (39%), and well trained (44%), nearly one third of each group would not give an opinion to the question. Only 33% of provincial offenders believed aboriginal staff were well selected and trained. However, when asked if non-aboriginal staff were well-selected and trained, 30% of the total sample said yes, 33% no and the remaining third had no opinion. Only 28% believed non-aboriginal staff understood their needs. Younger inmates, those less educated and those serving their first or second sentences were more positive about both aboriginal and non-aboriginal staff.

Pre-Release Programming

While 65% of respondents said they participated in pre-release programs participation was significantly higher for the federal group. However, three-quarters of those who participated completed the program. Fewer young provincial inmates participated in or completed pre-release programs. Inmates with less education were also less likely to complete release programs. Over 70% of all offenders believed aboriginal inmates require more programs to assist them with release and after release, and more of the older group held this view.

Interestingly, three-quarters believed they had learned 'a lot' about themselves in the institution and 49% thought they received useful treatment - more federal than provincial offenders believed

the latter which is consistent with their greater participation in programs. Another surprising finding was that 52% felt prepared to deal with society upon leaving the institution. However, significantly more inmates from aboriginal than non-aboriginal or a combination of communities believed this.

Aboriginal and Non-Aboriginal Needs

Nearly twice as many respondents (57%) believed aboriginal and non-aboriginal offenders have the same employment/education needs as compared to those that did not believe this (27%). However, when asked about family problems, only 38% agreed these were similar for both groups and significantly more federal and older offenders disagreed. Fifty-five percent (55%) believed the only differences between aboriginal and non-aboriginal offenders were cultural. However, 82% felt aboriginal and non-aboriginal offenders should be treated the same in institutions, and 55% felt staff did not treat the two groups the same.

Summary

Some important findings have emerged from the analysis of correctional personnel and inmate surveys. These include similarities and differences in perceptions of programs, needs and other issues related to aboriginal offenders, as well as differences among aboriginal inmates themselves. These differences are critical to know if the needs of aboriginal inmates are to be met.

The main findings from the correctional personnel survey are that respondents believed there are similarities and differences between aboriginal and non-aboriginal offenders, and among aboriginal offenders themselves. Accurately documenting these requires better intake assessment, although the majority of respondents still believed aboriginal offenders were accurately assessed and security classified. Lack of education, job skills, family support and alcohol and drug abuse were considered the most serious problems facing all offenders. When asked specifically about aboriginal offenders there was a slight re-ordering with lack of family support/poverty emphasized. Cultural/spiritual needs were not identified as the greatest problem for aboriginal offenders by the majority of respondents, however, cultural/spiritual programs were identified as the most useful programs in meeting their needs and reducing re-offending. At the same time, respondents did not generally feel that spiritual programs would meet the needs or reduce re-offending for non-aboriginal offenders. Respondents felt better institutional and post-release programs were required for all offenders, aboriginal staff were somewhat less qualified than non-aboriginal staff, and aboriginal offenders had the same release rates as non-aboriginal offenders and any differences were attributed to seriousness of offence and lack of community support. Respondents felt aboriginal offenders require much more family and community support in order to achieve successful reintegration.

These findings suggest dissonance and some confusion in the minds of many respondents on a number of issues but particularly about problems and solutions for aboriginal offenders. There is more consistency between perceived problems and solutions for non-aboriginal offenders. This is true whether exploring needs while in institutions or programs which reduce re-offending. One

explanation for the difference is that cultural programming for aboriginal offenders has become so entrenched that it was the most immediate response given and little else was considered.

Data from the inmate survey are particularly informative. Three-quarters of the male, aboriginal inmate respondents were Status Indian, from but not necessarily having spent most of their lives on reserves, with limited education and previous incarcerations. Provincial offenders are younger and have more previous incarcerations than federal offenders. Federal offenders had more access to programs than provincial offenders and participated more in them, particularly cultural/spiritual programs. Generally, inmates did not feel excluded from or shy about attending non-aboriginal programs. There was not high regard for selection and training of either aboriginal or non-aboriginal staff although it was somewhat higher for the former. Cultural/spiritual needs were identified by more federal inmates who also had greatest exposure to these programs. It may be more than a coincidence that those who have their needs identified by aboriginal workers also identify culture and spirituality as their greatest needs. However, employment, education were generally considered the greatest needs and alcohol the greatest problem.

Most inmates felt any program that helped them was of value and that both aboriginal and non-aboriginal offenders could benefit from each other's programs but that there were not enough programs in institutions, particularly provincial ones. They believed they had the same education and employment needs as non-aboriginal inmates but different family situations and culture. There was some inconsistency between perceptions of problems, adequacy of and participation in programs, and learning about themselves in institutions and feeling prepared to re-enter society. Offenders do not participate heavily in programs in areas where they claim to have the greatest need (i.e. employment and education) or in counselling, yet a surprising number feel they have learned a lot about themselves and are prepared to re-enter society.

Analyzing inmate responses according to federal/provincial, home community, number of times incarcerated, education and age variables revealed the following: inmates who have spent most of their lives on reserves are less well educated, see education and reading as more important, are more reluctant to participate in general programs because of shyness and feeling left out, do not participate as much in group counselling, feel more accepted by family and community and ready to re-enter society. Those with less education were less likely to complete release programs, believed education and employment were their greatest needs, did not think their needs had been adequately identified, and were less likely to participate in individual counselling programs.

Inmates from combination and non-aboriginal communities tend to identify culture and spirituality more often as needs, and have been incarcerated more often. Older inmates and those who have been incarcerated several times are more negative about staff, programming, acceptance by family and community, release etc. and have more alcohol problems, especially if provincial offenders. More young inmates and those with 3+ incarcerations spent their first period of detention in a youth. More young inmates considered education and reading their greatest needs and regard staff more positively. Young federal offenders believed there were enough aboriginal-specific programs.

There are differences in both correctional personnel and inmate perceptions about levels of release, security classification, adequacy of assessments, family support and family problems, and aboriginal participation in non-aboriginal programming. There was agreement on need for more programs inside and outside institutions, use of aboriginal program people, limited qualifications of staff, and lack of community support.

PART VII. THE FOUR R'S - RISK, RELEASE, RECIDIVISM AND REINTEGRATION

PART VII: THE FOUR R'S – RISK, RELEASE, RECIDIVISM AND REINTEGRATION

This section examines four of the most critical issues in aboriginal over-representation — risk, release, recidivism and reintegration. These factors, in conjunction with type of offence committed and admissions, are the most significant contributors to the over-representation phenomenon.

1. RISK

Patterns of behaviour related to offending are repeated in prison. In a longitudinal study in Canadian penitentaries, Zamble and Porporino (1990) found that prisoners responded similarly to a range of prison difficulties as they had to problems outside prison. Before conviction, their responses to problems often made matters worse. In prison, the structured environment meant they were less free to create problems for themselves, but their responses were often very similar despite the differences in problems which they encountered. They also found that previous offending and background measures were most strongly correlated with offending but so were some of their behavioural and attitudinal measures taken while in prison.

A number of individual variables are thought to be related to recidivism. Some of these include the severity and extent of criminal history, procriminal attitudes, antisocial associates, troubled home life, and drug abuse.[1] According to most major reviews, type and frequency of past convictions emerge as the best predictors of recidivism.[2] Predicting recidivism, however, requires a move beyond the predictive power of single variables to classification systems which employ a number of factors. Leading the way are psychological, personality, and behavioural inventories that attempt to define certain offender "types" according to the aforementioned characteristics. It is now widely agreed that objective risk assessments are more accurate than subjective approaches even though there remains room for improvement.

In general, classification systems demonstrate some capacity for producing accurate inmate categorisations according to risk. Nonetheless, they are still far from perfect as the amount of variance in inmate misconduct that is unexplained by these systems considerably exceeds the amount of variance that is explained. Classification systems generally contain a number of variables for assessment. These frequently include severity of current offence and criminal history, prior commitments, escape history, time to expected release and institutional adjustment and disciplinary violations.[3]

The predictive strength of these single variables would suggest a pessimistic view of the ability to successfully classify. However, when these variables are combined within a classification system,

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[1] Andrews, Bonta, & Hoge, 1990; Motiuk, 1993.

[2] e.g., Farrington & West, 1990; Hill, 1985. See also Clark, Fisher, & McDougall, 1993.

[3] see Buchanan *et al*, 1986; Motiuk, 1993; Champion, 1994; Proctor, 1994.

the results seem more promising. The Level of Service Inventory-Revised, one of the most extensive assessment tools, shows great potential. Briefly, the LSI-R is a standardized interview containing 54 items encompassing a wide range of offender attributes and situations such as criminal history, substance abuse, and employment. Respondents are scored 0 or 1 on the items; the higher the score, the greater the likelihood of institutional problems.[4] "Overall, the available data suggest the LSI-R classification instrument yields impressive predictions of both in-program performance and post-program outcomes across a variety of groups and correctional settings".[5] The LSI-R demonstrates predictive validity in estimating prison infractions and reincarceration and the ability to divert inmates from institutional placements to halfway houses without increasing the risk to the community.[6]

The importance of the assessment of dynamic risk factors, or criminogenic needs, is that these factors may serve as the appropriate targets for intervention and the monitoring of offender change. For example, procriminal attitudes and peers are hypothesized as important criminogenic needs where changing offender attitudes towards a more prosocial direction and shifting peer associations may result in lower recidivism, and offender rehabilitation research supports this claim.[7]

To date, the risk/need assessment has been applied primarily by parole officers to federal offenders released under community supervision. In January 1995, CSC initiated administering the assessment to offenders at the beginning of their sentences but data are still limited. *Table VII.1 (Community Risk/Need Assessment for Aboriginal and Non-Aboriginal Offenders Released on Full Parole, 1995)* provides the results of community risk/need assessments for offenders released on full parole. A comparison between aboriginal and non-aboriginal offenders released on full parole or statutory release shows that the aboriginal group scores higher on the risk/need assessment. For example, 27.8% of aboriginal offenders released on parole were classified in the high risk/medium or high need categories. This is 12.3% higher than for non-aboriginals in these same categories. See page 104 for tables.

The same trend is evident for offenders on statutory release -10.7% more of the high risk aboriginal than the non-aboriginal group are so released (*Tables VII.2&3 Community Risk/Need Assessment for Aboriginal and Non-Aboriginal Offenders on Statutory Release, 1995; & Summary of Combined Community Risk/Need Rating for Aboriginal and Non-Aboriginal Offenders, 1995*). Aboriginal offenders are under-represented in release to community supervision. This appears to be related to risk/need factors.[8]

A critical issue for aboriginal corrections is the suitability of classification and risk prediction instruments for aboriginal offenders. There are suggestions that aboriginal-specific instruments are required.[9] A recent re-analysis of an existing dataset[10] revealed that a risk-need assessment

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[4] see Andrews, 1982; Bonta & Motiuk, 1992; Bonta, 1990; Andrews and Bonta, 1995.

[5] Motiuk, Motiuk, & Bonta, 1992:145.

[6] see Bonta & Motiuk 1992; 1990.

[7] Bonta *et al, 1996.*

[8] York, 1995:21-22.

[9] Hann, Harman & Canfield, 1993.

instrument developed in Manitoba provided good to fair predictive validity for both aboriginal and non-aboriginal samples both at admission and probation termination. More aboriginal than non-aboriginal offenders were classified as high risk at admission and termination, and their risk levels improved less from admission to termination. Risk/need classification at admission and termination of probation showed Status Indians living off-reserve to have the highest scores.[11] However, while the sample living on-reserve had among the lowest risk scores they had among the highest reoffending scores. This indicates that reserves may have distinct and unique environmental characteristics which need to be reflected in the development of risk-need scales. Another important finding was that on some measures such as risk change from admission to termination and recidivism, the Metis/non-Status group was more similar to the non-aboriginal than the Treaty groups. This suggests that general scales are useful only for the general aboriginal group.

2. RELEASE

a). Who Gets Out of Prison?- Aboriginal and Non-Aboriginal Differences

Federally Sentenced Offenders

It is long believed that lower parole release rates for aboriginal inmates are a major contributor to the disproportionate levels of aboriginal incarceration. Lower parole rates have been attributed to cultural insensitivity, lack of aboriginal parole board membership, inequalities aboriginal offenders face when appearing before the parole board, and the likelihood of aboriginal offender's relinquishing their right to be considered for parole.[12]

To address the disparity in parole release rates between the two groups at the federal level, release preparation activities have been implemented by the National Parole Board in the past five years. These include the development of culturally sensitive assessments and the use of elders for assessment and community consultations about the attitude of communities to the return of a releasee.[13] The National Parole Board has instituted a policy which involves elders assisting at aboriginal offenders parole hearings. What does current data tell us about aboriginal release rates? How effective are these release preparation and parole hearing activities?

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[10] A sample of Manitoba probationers selected from 1986-1991 were assessed for risk/needs (using a modified Wisconsin classification system) at admission and termination of probation, and followed for three years to document re-offending. A secondary objective of the research was to determine the validity of the classification scale for aboriginal offenders. Sub-groups of aboriginal offenders, i.e., Status-on, Status-off and Metis/Non-Status, were also analyzed for risk/needs levels and for re-offending. Aboriginal offenders comprised 42.3% of the total sample. Generally, aboriginal offenders were younger and had more previous convictions than the non-aboriginal group.

[11] op cite 7.

[12] see Task Force on Aboriginal Peoples in Federal Institutions, 1988.

[13] CSC, 1991:9-11.

In 1988, the Task Force on Aboriginal Peoples in Federal Corrections analyzed data from 1983-87, and reported that aboriginal offenders are less likely than other federal inmates to be released on parole. In 1983, 14.1% of aboriginal offenders were released on full parole but, by 1987, this had increased to 18.3%. The comparable non-aboriginal figures were 41.7% and 42.1%, respectively. In 1988, fully 11% more non-aboriginal than aboriginal offenders were serving sentences in the community.[14] How do these findings compare to more recent data?

On July 2, 1995, 64% of the federal offender population was incarcerated and 36% under community supervision, including day parole, full parole, statutory release or temporary release. Seventy-six percent (76%) of aboriginal and 62% of non-aboriginal offenders were incarcerated. Nearly 38% of non-aboriginal and 24% of aboriginal offenders were under some form of community supervision – a difference of 14%.[15] What accounts for this difference and the lack of change in aboriginal release levels since 1987?

As shown in *Table VII.4 Type of Offence by Type of Release - Aboriginal, Caucasian and Black Offenders, 1995*, in April 1995, 56% of caucasian, 56% of black and 43% of aboriginal offenders were on full parole; somewhat more caucasians were on day parole, more aboriginal offenders were on statutory release, and similar proportions of each group was revoked or suspended. This suggests that the discrepancy between aboriginal and non-aboriginal parole rates noted in 1987 remains. However, when release type by offence is analyzed, it shows that the violence category is responsible for the difference in lower levels of full and day parole for aboriginal offenders, and black and caucasian offenders have the same full parole rates. Further, *Table VII.5 Ethnicity by Number of Days Released Past Full Parole Eligibility Date, 1995*, examines mean number of days served prior and after Full Parole Eligibility Date (FPED). It shows that black offenders are released earlier than caucasians, but aboriginal offenders are released somewhat later than both groups. Taken together, these findings suggest that type of offence and not racial bias appears to be the reason for lower parole rates of aboriginal offenders. Aboriginal offenders receive shorter sentences than non-aboriginal offenders but are spending more time incarcerated because of more serious offences and higher risk for parole.

On average aboriginal offenders are serving 1.96 years before release and non-aboriginal offenders 2.30 years. This is directly related to the fact that aboriginal offenders are getting shorter sentences. However, when the sentence length is factored in with the amount of time served, aboriginal offenders are serving a greater proportion of their sentences.[16] These findings suggest that sentence length is a more important factor than race in determining amount of time served.

In exploring the correctional status of female offenders past their full parole eligibility date, 52% of aboriginal females were incarcerated as compared to 21% of non-aboriginal. This may be accounted for by the higher risk classifications and greater difficulty presented by aboriginal

[14] ibid.

[15] York, 1995.

[16] This analysis includes only those offenders who have been released into the community, are first time federal offenders and are not serving life sentences.

offenders in formulating release plans because of less education and fewer employment skills, fewer connections to family and communities, and personal problems. The CSC/National Parole Board, Final Draft Report on the Study of the Detention Provisions of the Corrections and Conditional Release Act, (1995:25) states that "Aboriginal offenders are disproportionately represented in the detention referrals by virtue of the nature of their offences and the type of risk they present for re-offending (difficulty controlling violent offences combined with substance abuse problems)". While referred for detention more frequently than non-aboriginals, aboriginal offenders were subject to be detained at initial and annual reviews at the same rate as non-aboriginals. Aboriginal offenders who were released were, however, significantly more likely to have their release revoked than non-aboriginals.

Two factors suggest significantly different reactions by aboriginal offenders after an initial detention decision. Reasons cited for initial NPB detention decision illustrate that the proportion of offenders who refused to participate in programs and the incidence of negative institutional behaviour were the same for aboriginal and non-aboriginal offenders prior to referral. The reasons cited for confirming a detention order at an annual review, however, reflected that the rate of refusal to participate in programs increased by 11% for the aboriginal group, while the increase for the non-aboriginal group was 3%. An even greater difference between the two groups was noted in negative institutional behaviour, increasing by nearly 15% for the aboriginal and 2% for the non-aboriginal group.[17]

Temporary Absence

Temporary absences are generally granted to offenders so they may leave the institution for a few hours or several days. Most are escorted. Temporary absences are often the first step in the process of conditional release. Grant and Porporino (1992) explored aboriginal /non-aboriginal differences in the granting of TAP's using 1986-1991 CSC data. They found that aboriginal offenders receive more than the expected number of compassionate and Family and Community contact TA's given their proportion of the inmate population. These findings, over time and controlling for violence and criminality variables, suggest aboriginal offenders are not being given more negative treatment in the granting of TA's, and, to some extent, may even be receiving preferential treatment.

Provincially Sentenced Offenders

Three of the five provinces from which data were requested, - B.C., Saskatchewan and Manitoba - provided information about the number of days actually served by aboriginal and non-aboriginal offenders. In all three provinces, aboriginal and non-aboriginal offenders served similar periods of times, despite the fact that aboriginal offenders generally received shorter sentences. In Manitoba, more offenders served sentences of 181 days or more (13%) as compared to 8.5% in each of the other two provinces.

[17] CSC & NPB, 1995:27.

Parole data from Ontario and B.C., revealed that parolees in B.C. were somewhat younger than the comparable group in Ontario, but more in Ontario were female. Parolees in B.C. had shorter periods of parole but in both provinces aboriginal offenders on parole had more previous contacts with the criminal justice system than the non-aboriginal group. The proportion of aboriginal offenders on parole in each province was similar to the proportion incarcerated.

b). Correctional Personnel Perceptions About Release

When correctional personnel respondents were surveyed about release, 47% thought aboriginal offenders were released as early as or earlier than non-aboriginals. For those aboriginal offenders who did not get early release, 55% of respondents believed it was because of seriousness of crimes (i.e., violent or sexual offences), and 20% because of lack of programs in aboriginal communities. More than two-thirds believed aboriginal offenders had more difficulty formulating release plans than non-aboriginal offenders. Three-quarters believed the difficulty stemmed from a lack of community, community support and/or community resources. Over 60% felt it was essential to focus on communities in order to facilitate release planning for aboriginal offenders. They believed this should be supplemented by long-term substance abuse treatment for offenders. One-quarter of the respondents thought pre-release and 42% thought after-care programs were essential in order to encourage and facilitate reintegration.

By contrast, nearly two-thirds of inmate respondents believed aboriginal offenders have more problems with release than do non-aboriginal and have more problems getting into community training programs. Significantly more of the older group with three or more incarcerations believed this. Only 1/3 thought there were enough programs for aboriginal offenders once released but less than 1/2 (48%) agreed that aboriginal programs are more useful in meeting the needs of aboriginal offenders than are general ones. Only 33% said they were able to continue cultural/spiritual programs upon previous release from institutions, and more of these were provincial inmates mainly from aboriginal communities with one or two incarcerations.

c). Parole Revocation

Federal data (July, 1995), reveal little difference between the number of terms served by aboriginal and non-aboriginal offenders. Over-all, aboriginal offenders have served a mean of 1.3 terms as compared to 1.4 for non-aboriginal offenders. There were no significant differences in aboriginal and non-aboriginal parole revocations within or among regions. This suggests that the Prairie Regions is not revoking parole more often than other regions as might be expected given the higher aboriginal incarceration level in that region.

3.RECIDIVISM

The likelihood of a new conviction increases as the follow-up period of post-probation people increases. For example, in a recent study of risk classification in Manitoba involving provincial offenders, only a quarter of post-probationers were reconvicted in the first year of follow-up as

compared to two-thirds by the fourth year.[18] The risk factors most associated with re-offending are time employed, attitude to probation, address changes, age, number and type of prior convictions and gender; the needs factors are marital/family relations, financial, emotional stability, mental ability, peers, alcohol/drugs, employment and academic vocational.

In Australia, Broadhurst (1992) found the factors which best predicted recidivism, other than race and gender, were age (the young do worse), length of incarceration and offence (more serious offences and those serving longer than six months did better), prior imprisonment (those with prior imprisonment did worse), type of release (participation in work release/parole did better) and employment and education status (those with jobs and qualifications did better). Accommodation, employment and cash on release had significant effects on lowering recidivism. People released to parole did better than those released to finite sentences or time served for fine default.

a). Aboriginal and Non-Aboriginal Recidivism

Recidivism is a central issue to aboriginal over-representation. There is a growing body of data which shows aboriginal recidivism levels to be higher than those for non-aboriginal offenders.

Findings from federal correctional populations suggest aboriginal offenders are at greater risk of re-offending than their non-aboriginal counterparts. Findings from Australia are similar.[19] In Canada, the likelihood of a male aboriginal revoking his parole is almost twice that of a male non-aboriginal (51% vs. 28%), and the likelihood of an aboriginal penitentiary releasee committing an indictable offence is 12 -19 percentage points higher. Aboriginal offenders also present higher risks with respect to recidivism for violent offences.[20]

In analyzing federal correctional population data, found offence type, prior convictions, prior incarceration, age at first conviction and sentence length showed significant predictive validity for aboriginal inmates. Aboriginal inmates with shorter sentences were more likely to recidivate than non-aboriginals with longer sentences.[21] Hann and Harman (1993) found the recidivism rate for the non-aboriginal group was 47% and for the aboriginal group 66%. Community risk/need assessments (administered by parole officers to offenders under community supervision) revealed that more aboriginal than non-aboriginal offenders on full parole were in the high/medium risk and high need categories. Recent data also reveal that 11% more aboriginal

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[18] Bonta *et al*, 1994:53.

[19] In Broadhurt's study, aboriginals had twice the probability of non-aboriginals of returning to prison for a more serious or an equal offence. Male aboriginals had a 76% probability of returning to prison for any offence as compared to 45% for non-aboriginals; for females, the comparable figures were 69% and 36% (1992:38). Homicide and narcotic sellers had low repetition and returning for offences of violence. One out of five non-aboriginals and one out of two aboriginals would return for a further sex or violence offence. For both groups, those with prior records and under 24 years of age had high risks of repeating further sex or violence offences. Other research in Australia found recidivism rates of aboriginals to be much higher than for non-aboriginals (Biles, 1992).

[20] see Harman and Hann, 1986; Hann, Harman & Canfield, 1993; York, 1995.

[21] Bonta, Lipinski & Martin, 1992.

than non-aboriginal offenders on statutory release score in the high/medium risk and high need categories than non-aboriginal offenders.[22]

Aboriginal and non-aboriginal re-offending patterns for provincial offenders are less clear. In studying inmates from three jails in Northern Ontario, Bonta (1989) found little difference between the reincarceration rates of the aboriginal and non-aboriginal groups. For example. one year after release, 43.8% of the aboriginal group was reincarcerated as compared to 42.3% of the non-aboriginal group. Nor did the aboriginal group pose a higher risk in terms of LSI-R risk scores. The main differences was that alcohol and drug use predicted parole violations and reincarceration for the aboriginal group, whereas for the non-aboriginal group it predicted reincarceration risk only.

4. REINTEGRATION

Reintegration of the offender into the community where the community provides support and assistance should be a major focus of correctional policy. The positive effects of institutional programs will be wasted if follow-up programs are not available in the community. The need for aboriginal women to have community support when in the institution and to be near the community for purposes of reintegration, were major justifications for the need for the recently opened Healing Lodges. A community strategy to assist female offenders to integrate into communities upon release was viewed by members of the Task Force on Federally Sentenced Women as integral to meeting the long-term goal of creating choices for federally sentenced women.[23] However, there are some outstanding issues in relation to reintegration which are discussed below.

a. Needs of Aboriginal Offenders and Aboriginal Communities: What is the Fit?

There are two groups of constituents - aboriginal offenders and aboriginal communities, the needs and values of which any reform movement must address. The aboriginal justice discourse and pressures for correctional reform such as contained in the Corrections and Conditional Release Act (1992) and in various inquiries, are premised largely on the needs of aboriginal people incarcerated in provincial, federal and territorial institutions, and the role of communities in redressing the recidivism problem through successful reintegration of releasees. Certain assumptions are made about the willingness and capacity of communities to meet this objective.

There are two central community reintegration issues. First, the accord between offender objectives/needs and community concerns; second, the role of communities in correctional policies and programs and in assuming responsibility for dealing with offenders at the time of

[22] York, 1995:111.

[23] see Task Force on Federally Sentenced Women, 1990.

offending and upon release. The views of front-line workers in the community survey[24] and inmates in the inmate survey are informative in this regard.

Offender and community needs:

Community respondents noted that offenders need and generally receive support from families but are less likely to receive support from communities. Over two-thirds of the inmates felt supported by their families while in the institution but only 44% said families visited them. A surprising 88% thought families welcomed them home but only 55% felt families understood their problems. The response levels were lower for community involvement/support. Only 33% said their home community supported them while in the institution (however 30% did not give an opinion); 43% said their community welcomed them home, and 30% that their community understood their problems. Interestingly, when asked about having a home community to return to, 18% had no community to return to and a surprising 26% would not give an opinion.

There was a difference among inmate respondents in support by families and communities. More offenders who were mainly from aboriginal communities felt accepted and understood by families and communities. More provincial offenders from non-aboriginal communities were visited by families. Those 24-35 years of age received more visits and support from families and communities than those in the younger or older age groups. Inmates who had been incarcerated more than three times had the least support from families or communities and felt least prepared to re-enter society.

Community members often fear and are apprehensive about their own safety and security, particularly when the offender has committed a serious offence. A common complaint is that offenders frequently return to the same situations and groups that got them into trouble in the first place.[25] Other concerns expressed by respondents were that offenders do not change or take responsibility for their own behaviour; there is nothing for them to do in communities; families are overly-protective and do not place any responsibility on offenders; and the families to which they return are themselves often dysfunctional and in need of assistance. Respondents felt offenders require employment and education, and programs such as alcohol treatment, behaviour modification and intensive counselling. These resources are generally lacking in communities especially if geographically outside the mainstream. Where services are available, those who staff them do not necessarily have the training, knowledge and skills to deal with offenders, families and other community members in order to facilitate the reintegration process. Few respondents commented on cultural/spiritual needs of offenders.

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[24] Approximately 50 interviews were completed from workers in the N.W.T., Saskatchewan, Manitoba, Newfoundland and Labrador, and Quebec. The majority of responses were from workers in remote and rural communities. These data are supplemented, where appropriate, with findings from the survey of correctional personnel.

[25] Some respondents volunteered information about young offenders returning to communities. They believed young offenders are most in need of parental discipline and consistency in discipline, and the capacity to deal with peer pressures in communities.

Community respondents believed communities make a distinction between offenders who commit serious offences such as sex and violent offences, and those who commit less serious ones. Serious offenders tend to be ostracized by the community even when accepted by families. Families are usually welcoming (regardless of offence) at least until the individual re-offends. Families are often isolated with little help offered them or the offending member by the rest of the community. Fear of the offender and the general lack of resources for dealing with offenders with serious problems, were identified as the most common community concerns. These findings are also reflected in the evaluation of the Stan Daniels Centre which revealed that negative responses from communities and finding employment were among the most frequently mentioned barriers facing offenders when released into communities.[26]

Needs of offenders must be considered in light of the needs of communities. Many aboriginal communities are geographically isolated and plagued by high unemployment, lack of resources, and high levels of crime and disorder. Several respondents felt the most pressing needs of communities, such as security, safety and general well-being, must be met before satisfactory reintegration of offenders can occur. They believed full-time police services were required. Other resources and services, such as employment, education, and counselling, are also required to meet community needs and facilitate the reintegration process. Most offenders, however, have few options about where they go upon release. Many return to the same criminogenic conditions. For example, one research study found that more aboriginal than non-aboriginal young offenders in northern Ontario returned to a criminal neighborhood, i.e., as defined by living with others who had problems with the law, sold drugs etc..[27]

Community involvement and follow-through:

Questions about community involvement with released offenders revealed that the vast majority of respondents felt the main reason for lack of involvement and support from communities was because the needs of offenders and their families were not well understood. They believed that if community members understood the causes of family violence, sex offending and other offences, they would be more supportive of returning offenders. Community respondents believed entire communities should be involved with reintegration and educated about the unique needs and realities of offenders to match reintegration activities with needs. Most respondents did not feel offenders were well prepared for release or that their problems and behaviours had changed. This corresponded to the correctional personnel survey finding that 58% of respondents felt offenders posed the same or more risk for re-offending after treatment, even though over one-half of offenders with previous releases felt prepared to deal with society upon release. Community respondents complained that there is little follow-up when offenders are in the community.

There were a number of suggestions about providing better information to communities concerning the needs of offenders and families. These included someone going door-to-door to provide information as it is often difficult to get people to attend community meetings. Others

[26] NCSA, 1993:28.

[27] Thompson, 1993:16.

thought existing justice services, such as police, should be responsible for educating community members. Still others believed a community justice worker should be hired and trained. There is a need to bring issues into the open so offenders and families are not the subject of gossip and socially isolated in communities. One respondent suggested that in order to break the cycle of dysfunction and re-offending, families should have the same access to treatment as the incarcerated offender. Family denial of wrong-doing by family members should also be confronted.

Support groups for offenders and families, self-help groups, counselling, health workers, ceremonies to address offence and victimization and bring closure to the issue, were considered essential for the reintegration process. More gradual integration using a community half-way house was also suggested. If such a facility was available the offender could visit and assist family and other community members during the day and return to the centre in the evening. The correctional personnel survey respondents believed a combination of changed behaviour on the part of the offender and acceptance and reintegration by families and communities, were the most important factors in a successful release. Counselling, support to offenders and families, close supervision and substance abuse programs were the community resources considered most necessary to reduce re-offending.

Reintegration Considerations:

The findings in this section lend support to the existence of differences among aboriginal offenders as identified in Part III. The need to understand differences among aboriginal offenders and their communities of origin is an important component of understanding over-representation. The unique problems of aboriginal people on reserves and in inner cores of cities are central to their over-involvement in the criminal justice and correctional systems. While cultural explanations have been paramount in explaining over-representation, multi-dimensional theories may hold more explanatory power. Status groups appear to be most vulnerable to involvement in the criminal justice system because of their social and economic isolation from mainstream society. The Status group leaving reserves without skills or education may be the most vulnerable of all. At the same time, however, those mainly from reserves still felt most accepted back by families and communities. Those least accepted have the most entrenched involvement with the correctional system.

The role of communities in reducing the risk of re-offending and turning offenders into law-abiding citizens was emphasized in the literature and by respondents in the correctional and community surveys. Involvement of community while offenders were incarcerated and upon release was seen as the most crucial element for addressing offender needs. Clearly, effective reintegration of offenders into families and communities is critical to reducing re-offending. however, not all offenders have the same access to communities as the inmate findings revealed.

There are two types of reintegration. The first is reintegration of offenders into home communities which are also the environments which caused their initial problems. In these environments, anti-social attitudes and certain pro-criminal life-styles and peer groups act inhibit the adoption of pro-social attitudes. The second type of reintegration is into families and

communities which promote behavioural change and the adoption of pro-social values. The issue, therefore, is not only one of reintegration (as often suggested) but reintegration into the right environment.

Summary

Parole release data reveal that federal aboriginal offenders are less likely than non-aboriginals to receive full parole but that seriousness of offences appears to explain the differential release rates. However, aboriginal offenders are more likely to receive temporary absences. Aboriginal offenders also have higher recidivism levels. Because of prior offences and seriousness of offences, aboriginal offenders are considered a higher risk for re-offending which, in turn, influences parole decision-making. This is exacerbated by a difficulty in formulating release plans, and, as the survey data reveal, in receiving support from communities.

There are, however, important differences among the aboriginal group. Analysis of the Manitoba database revealed recidivism rates were significantly higher for the aboriginal than the non-aboriginal, and for the Status than the Metis/non-Status groups. This suggests that the Status group in some parts of the country may return to more criminogenic environments. These findings are consistent with previous research[28] about crime and disorder on-reserve, and in inner cities, particularly those in western Canada.

The findings about family and community support (or lack thereof) are consistent across the correctional personnel, inmate and community surveys. Families are generally supportive but communities are much less so, especially when offenders are older, have multiple incarcerations and are not from a defined aboriginal community. This is a critical issue as the aboriginal-specific policies revolve around two aspects of offender's - program needs and reintegration into families and communities, however community is defined.

The high recidivism of the Status sample suggests the need for change to their communities of origin – whether reserve or inner city. Unless people's lives change so their attitudes, peer groups and family relations also change, alterations to the criminal justice system or the creation of local justice initiatives will be minimal in reducing involvement in the correctional system. In a number of significant ways, aboriginal offenders are disadvantaged by their backgrounds, their communities, and their involvement with the criminal justice system. It is a vicious circle and one that is difficult to break.

[28] see Depew, 1993; Trevethan, 1991; Griffiths *et al*, 1995; LaPrairie, 1992, 1994.

Table VII.1 Community Risk/Need Assessment for Aboriginal and Non-Aboriginal Offenders Released on Full Parole, 1995

COMMUNITY RISK/NEED ASSESSMENT FOR ABORIGINAL AND NON-ABORIGINAL OFFENDERS RELEASED ON FULL PAROLE				
COMMUNITY RISK/NEED RATING	ABORIGINAL % OF ABORIGINAL OFFENDER POPULATION	N	NON-ABORIGINAL % OF NON-ABORIGINAL OFFENDER POPULATION	N
LOW RISK/LOW NEED	36.8%	75	49.1%	1,732
LOW RISK/MEDIUM NEED	26.9%	54	26.5%	935
LOW RISK/HIGH NEED	3.5%	7	2.6%	93
MEDIUM RISK/LOW NEED	0.5%	1	0.6%	22
MEDIUM RISK/MEDIUM NEED	2.0%	4	3.1%	109
MEDIUM RISK/HIGH NEED	0.5%	1	1.2%	43
HIGH RISK/LOW NEED	2.0%	4	1.2%	44
HIGH RISK/MEDIUM NEED	13.4%	27	7.2%	253
HIGH RISK/HIGH NEED	14.4%	29	8.3%	293

(Source: York 1995:21)

Table VII.2 Community Risk/Need Assessment For Aboriginal and Non-Aboriginal Offenders on Statutory Release, 1995

COMMUNITY RISK/NEED ASSESSMENT FOR ABORIGINAL AND NON-ABORIGINAL OFFENDERS ON STATUTORY RELEASE				
COMMUNITY RISK/NEED RATING	ABORIGINAL % OF ABORIGINAL OFFENDER POPULATION	N	NON-ABORIGINAL % OF NON-ABORIGINAL OFFENDER POPULATION	N
LOW RISK/LOW NEED	4.6%	8	7.5%	113
LOW RISK/MEDIUM NEED	15.0%	26	19.9%	299
LOW RISK/HIGH NEED	1.7%	3	2.8%	42
MEDIUM RISK/LOW NEED	0.6%	1	1.3%	20
MEDIUM RISK/MEDIUM NEED	5.2%	9	7.2%	108
MEDIUM RISK/HIGH NEED	2.9%	5	3.7%	56
HIGH RISK/LOW NEED	2.9%	5	1.3%	19
HIGH RISK/MEDIUM NEED	20.2%	35	16.0%	241
HIGH RISK/HIGH NEED	46.8%	81	40.3%	607

(Source: 1995:22)

Table VII.3 Summary of Combined Community Risk/Need Rating for Aboriginal and Non-Aboriginal Offenders, 1995

SUMMARY OF COMBINED COMMUNITY RISK/NEED RATING FOR ABORIGINAL AND NON-ABORIGINAL OFFENDERS				
	ABORIGINAL		NON-ABORIGINAL	
COMBINED COMMUNITY RISK/NEED RATING	Full Parole*	Statutory Release*	Full Parole*	Statutory Release*
LOW RISK/LOW AND MEDIUM NEED	63.7%	19.6%	75.6%	27.4%
HIGH RISK/MEDIUM AND HIGH NEED	27.8%	67.0%	15.5%	56.3%
* Percents indicate the proportion of Aboriginal or non-Aboriginal offenders in each category.				

(Source: York 1995:22)

Table VII.4 Type of Offenders by Type of Release for Aboriginal, Caucasian, and Black Offenders, 1995

OFFENSE TYPE	CAUCASIAN									
	Violence		Drugs		Murder		Sex		Total	
	%	n	%	n	%	n	%	n	%	n
FEDERAL-Full Parole	44	1465	78	893	84	631	43	318	56	3307
FEDERAL - Day Parole	17	574	10	114	15	110	15	113	15	911
STATUTORY RELEASE	32	1066	6	73	-	-	39	286	24	1425
REVOCATION\ SUSPENSION	7	216	6	66	2	1	2	18	5	311
TOTAL	56	3321	19	1146	13	752	12	735	100	5954

OFFENSE TYPE	ABORIGINAL									
	Violence		Drugs		Murder		Sex		Total	
	%	n	%	n	%	n	%	n	%	n
FEDERAL-Full Parole	35	146	78	18	85	63	42	55	43	282
FEDERAL - Day Parole	13	54	13	3	12	9	11	15	12	81
STATUTORY RELEASE	44	187	9	2	1	1	45	59	38	249
REVOCATION\ SUSPENSION	9	36	-	-	1	1	2	31	6	40
TOTAL	68	423	4	23	11	74	20	132	100	652

OFFENSE TYPE	BLACK									
	Violence		Drugs		Murder		Sex		Total	
	%	n	%	n	%	n	%	n	%	n
FEDERAL-Full Parole	39	66	80	109	83	10	31	10	56	195
FEDERAL - Day Parole	13	22	9	12	17	2	9	3	11	39
STATUTORY RELEASE	36	61	8	11	-	-	53	17	25	89
REVOCATION\ SUSPENSION	12	21	3	4	-	-	6	2	8	27
TOTAL	49	170	39	136	3	12	9	32	100	350

(Total excludes those deported or in Federal Temp. Detention.)

Chi Squares Violence p = .000 Drugs p = n.s. (cells too small) Murder p = n.s. (cells too small)
Sex p = .000 (cells too small) Total p = .000

(Source: CSC. OMS April 30, 1995)

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Table VII.5 Ethnicity by the Average Number of Days that Offenders Released After Full Parole Eligibility Date

ETHNICITY	NUMBER OF DAYS RELEASED PAST FULL PAROLE	NUMBER OF OFFENDERS
Caucasian	909	1967
Aboriginal	971	184
Black	329	83
Other Ethnicity	347	109
Unknown	1567	41
All Offenders	879	2384

PART VIII. WHERE DO WE GO FROM HERE?

PART VIII: WHERE DO WE GO FROM HERE?

> *Much deviance is expressive, a clumsy attempt to say something. Let the crime then become a starting point for a real dialogue, and not an equally clumsy answer in the form of a spoonful of pain (Christie, 1982:11).*

Reducing the use of imprisonment for aboriginal offenders necessitates discussing the issue more broadly as the level of imprisonment in a country is related to many factors far beyond the issue of race, as discussed in Part I. The modern era in penology has seen "state control dispersed into the social fabric"[1] where state law becomes intertwined with the non-state normative order. Given continuing increases in levels of imprisonment, however, directions that reduce the reliance on imprisonment and transform the desire for punishment into a search for solutions to common problems are still required.

Part VIII explores some of these directions. It describes the general literature on intermediate sanctions and community corrections. Attention is also paid to the realities and needs of aboriginal offenders and communities. These needs vary according to community and provincial factors, such as level of aboriginal incarceration and degree of social and economic marginalization of the aboriginal population. Part VIII also examines institutional issues for those individuals unlikely to be affected through enhanced use of alternatives.

Reducing the Reliance on Imprisonment

There is a general unease about the value of widespread use of imprisonment.[2] Few disagree that for some serious and harmful offences and offenders there is a need to contain people. At the same time, however, the pain of imprisonment is real, the effects on already vulnerable people profound, and the rehabilitative and other outcomes less than satisfactory. The most intractable imprisonment problems in many countries, such as over-crowding, riots, poor conditions and inadequate work or other program opportunities for inmates, are caused, in part, by the sheer numbers of people in custody.[3] In comparison to other countries, it is clear that in Canada, the reason for the high levels of both aboriginal and non-aboriginal incarceration is an over-reliance on the use of imprisonment. Canadian society is not more criminogenic than most other societies yet this is not reflected in its level of imprisonment. The reliance on imprisonment, often for

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[1] Foucault as quoted in Henry and Milovanovic, 1994:115.

[2] Broadhurst, in explaining the slight decrease in the use of imprisonment in Western Australia from 1983-1989, argues that imprisonment is seen as offering little in the way of deterrence or reform and is often regarded as producing rather than reducing criminal behaviour. In response, there is now in W.A. a tendency to increase penalties for the more serious but rarer offences and decrease penalties for the more common but less serious offences (Broadhurst, 1996:58).

[3] see Garland, 1991; Young and Brown, 1993:2.

relatively minor offences resulting in short sentences, is most obvious when admission rates to Canadian correctional institutions are compared to those of other countries.[4]

The value of prison is rarely described in terms of its comparative advantage over other approaches. The value of imprisonment would be difficult to document. A Home Office study in Britain (1995) found that "there is no clear evidence to suggest that custody outperforms community penalties or vice versa in preventing re-offending".[5] The pain of imprisonment and the negative effects on people whose lives are already deprived and dysfunctional, is often blinded by a belief in rehabilitation and the need for severe and obvious punishment. That it may do little better than another less retributive and costly response receives scant attention. The public looks to prisons as a solution to social problems, and despite the cost involved and over-crowding in prisons in many Western countries, it continues to cry for more punitive legislation.[6]

Decreases in the use of imprisonment are possible. In Germany, a decrease in prison populations between 1968 and 1970 was attributed to legislative reforms aimed at reducing admissions. Many traffic offences were made non-imprisonable, non-violent sex offences decriminalized, prison sentences of up to one year became suspendable, and fines were made a sentencing alternative for most crimes. Germany also dramatically reduced the number of prosecutions and diverted people to projects.[7] In Australia, between 1990 and 1993, States that showed decreases in imprisonment made greater use of non-custodial and community orders; by contrast, those which showed increases, abolished or reduced remissions and early release.[8] It is argued here that for the majority of offences which come before the courts imprisonment should be considered only as a last resort, and its use negotiated among victims, offenders, communities and criminal justice personnel.

When will Canada take its place beside countries with more humane and realistic levels of imprisonment? Landreville (1995), in considering the recommendations of the Canadian Sentencing Commission, argues that principles of moderation, justice and humanity must prevail, and community measures applied as widely as possible so imprisonment is used only when absolutely necessary.

Three directions for reducing the reliance on imprisonment are examined below. The first, intermediate sanctions, has been the subject of much study and debate in Canada in recent years.[9] The second direction is greater use of existing community-based correctional resources. Finally,

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[4] Of the 33 countries surveyed in the Fourth United Nations Survey, Canada had the highest rate of admissions to prison in 1990.

[5] NARCO, 1995:13.

[6] see Brady, 1992.

[7] see Young and Brown, 1993:21.

[8] see Broadhurst, 1996:72.

[9] Intermediate sanctions provide the most immediate potential for limiting the use of carceral sentences so are important to discuss again. The general literature on alternatives and their relevance for aboriginal offenders is also explored.

the third direction, the potential for community justice to assume responsibility for social control and deal with offenders within the boundaries of communities, is examined.

1. Intermediate Sanctions

Rehabilitation of offenders has declined in the past twenty years due to the individualization of society and the victim movement. The turn away from rehabilitation has re-emphasized the classical principles of responsibility and retribution.[10] At the same time, however, fiscal and other restraints and the acceptance that prisons are dehumanizing and criminogenic, has influenced the move to the community to be involved in the punishment process, and the search for alternatives to imprisonment. However, for alternatives to be effective in meeting the objectives of reducing prison population, costs, and recidivism, there must be a greater range of sanctions, and the imposition of alternatives on a much larger scale. In addition, alternatives must somehow meet the punishment objectives of retribution and deterrence, while at the same time offering more opportunities for rehabilitation.[11]

Intermediate sanctions have been the most popularly advocated response to growing prison populations because they provide alternative sentencing dispositions. These sanctions typically include fines, community service, day centres, home detention and electronic monitoring, intensive supervision and boot camps.[12] They have been justified in terms of being intermediate options along a severity continuum contained by two polarized extremes: imprisonment (most severe) and probation and parole (least severe). Intermediate sanctions are more likely to be effective if they are suitable replacements for custodial sentences in terms of achieving the same goals; are socially and legally acceptable as a punishment; are as advantageous as custodial sentences, or at least equally as advantageous as disadvantageous; and reliable substitutes for the custodial sentences which otherwise would have been imposed.[13]

Junger-Tas (1994) identifies two sets of objectives of alternative sanctions - offender and system related objectives. Offender-related objectives include assurance of real punishment, retribution, and some degree of incapacitation. Reparation to the victim are the objectives of only some alternatives and rehabilitation is generally secondary to the other objectives. System-related objectives are reductions in prison populations and costs, and a decrease in recidivism. The only way to reduce costs is to close down or stop building prisons. This is unlikely to occur where alternatives are used in only half the eligible cases or when used (e.g. intensive supervision and

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[10] In his book, *Punishment and Welfare* (1985) David Garland traces the move from the Victorian model of penology with its emphasis on reason and responsibility to the modern era where classification, assessment and differentiation of offenders prevailed. In the latter, knowledge became paramount and dictated the way in which offenders were differentiated and by whom. The focus was the offender. In the classical model, the focus was the offence.

[11] see Junger-Tas, 1994:45.

[12] Pre-or post charge forms of diversion include mediation or victim-offender reconciliation, restitution or compensation involving payment of damages, restitution of stolen objects, working for the victim as reparation. Diversion may also involve referrals to various kinds of treatment.

[13] see Morris & Tonry, 1990;. Stolwijk, 1988.

electronic monitoring programs), conditions and surveillance are more strict, and, as a result, violations more common. Empty prison space is also immediately filled again.

One sanction which has received considerable praise and support is the fine. In Europe, the fine has led to reductions in the use of prison sentences and in many countries has assumed the role as the primary criminal penalty. The advantages of the fine are that it can achieve punitive and deterrent objectives; is flexible in reflecting offence seriousness and the offender's financial capacity to pay; can be coupled with other sanctions; allows the offender to stay in the community; is relatively inexpensive to administer; and generates revenue for other criminal justice related purposes.[14]

Fines have been criticized based on the possibility that subsequent fine defaults can eventually lead to incarceration, especially for the economically disadvantaged.[15] Imprisonment, however, is not inevitable and should be considered a last resort. In most Australian and Canadian jurisdictions, for example, community work programs have been developed to deal with fine default offenders.[16] Efforts can also be made to minimize the likelihood of defaults. The day fine system, in contrast to the fixed fine or tariff systems,[17] allows all offenders a feasible amount to pay.[18] In West Germany, the increase in the rate of fine sentencing was not accompanied by a subsequent increase in fine defaults. Moreover, while the affluent have experienced higher fine amounts, amounts have remained relatively low for poorer offenders.

Although the European experience reveals the potential of fines as replacements for custodial sentences, it is not clear whether other intermediate sanctions have been successfully substituted for prison sentences. While there is some evidence indicating that the availability of non-custodial sanctions has led to a reduction in the European use of short prison sentences, the recent rise in prison populations in Europe has not been slowed by the existence of intermediate sentencing options. At best, the available research suggests these sanctions replace only 50-60 percent of prison cases.[19]

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[14] For a full discussion of the use of fines see Branham, 1992; Hillsman, 1990; Morris & Tonry, 1990; Junger-Tas, 1994; Stolwijk, 1988.

[15] see McMahon, 1992.

[16] see New Developments, 1992.

[17] These systems typically consist of informal fining standards based on the notion that the same or similar fine amounts are to be imposed on all offenders convicted of a particular offense (Hillsman, 1990). Certain standards like higher-fine tariffs, Hillsman (1990) cautions, can either limit the range of offenders to be fined or result in poorer offenders being imprisoned for fine default.

[18] Its "fundamental idea is to separate the calculation of the fine amount into two components: the first adjusts the amount for the severity of the offence and the second adjusts it for the offender's financial circumstances. ... the major purpose of this approach is to give fines a more consistent impact across rich and poor." (Hillsman, 1990:9). Successful fining systems also depend on effective collection techniques which involve reasonable payment terms and the encouragement and close monitoring of these payments. Western European courts employing these techniques have maintained high collection rates in spite of the large heterogeneous populations they serve and their extensive use of the fine for serious matters.

[19] see Junger-Tas, 1994; Snacken & Beyens, 1994.

A common criticism of intermediate sanctions is that they widen the net of correctional control, absorbing offenders who would not otherwise be in prison. Many commentators maintain the sanctions do not substantially reduce prison populations[20] although, as McMahon (1992) suggests, the extent to which net-widening has occurred in this manner has been largely overstated if not, inaccurate.[21] Critics point out that community-based programs are already overcrowded, holding significantly more offenders than prison.[22] Furthermore, high revocations and sanction violations can result (sometimes automatically) in subsequent imprisonment, thereby increasing incarcerated populations.[23]

One consequence of net-widening is that it can undermine the supposed cost-effectiveness of alternative sanctions. Although these options may be less costly than imprisonment, they may still be more expensive than traditional probation or parole, especially if they require closer supervision and monitoring. Intermediate sanctions can also produce systemic expansion of penal resources in terms of additional system personnel and program 'service delivery' capacity; all of which can inflate total correctional costs.[24]

Some observers have also questioned the ideological basis of noncustodial sentencing options charging that punishment objectives have replaced traditional community-based program goals such as rehabilitation and community integration. Others suggest that community corrections is in the business of controlling, rather than changing offenders.[25] Feeley and Simon (1992) suggest that community-based sanctions can be understood in terms of risk management rather than rehabilitation and treatment, controlling low-risk offenders for whom the more secure forms of custody are deemed too expensive or unnecessary. Thus, the importance of community-based sanctions "goes beyond their ability to stretch penal resources; they expand and redistribute the use of imprisonment (italics added)." (p.460).

The availability of intermediate sanctions alone does not ensure their use. The failure to use these options has been attributed to inadequately controlled or structured sentencing discretion. To facilitate, encourage, and even demand that they be used, some kind of sentencing policy, guidelines, or laws for judges has been recommended.[26] Sentencing guidelines, however, do not guarantee intermediate sanction use. The literature has identified several potential issues that complicate matters. Doob and Marinos (1995) argue that sentencing systems based on a severity continuum fail to take into account the various functions that punishment may serve. The suggested equitability and exchangeability of punishments, therefore, is problematic when certain sanctions serve certain purposes that other

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[20] e.g., Biles, 1992; Gendreau, Paparozzi, Little, & Goddard, 1993; Morris & Tonry, 1990.

[21] McMahon (1992) contends that the net-widening argument has been largely based on the "sketchy" documentation of trends in imprisonment and substantive processes of net-widening.

[22] Rosenfeld & Kempf, 1991.

[23] Snacken & Beyens, 1994.

[24] see Mainprize ., 1992.

[25] e.g., Benekos, 1990; Gendreau, et al, 1993; Swaaningen & Beijerse, 1993; Feeley & Simon, 1992; Byrne, 1989.

[26] e.g., Branham, 1992; Doob, 1990; Morris & Tonry, 1990; Sabol, 1990.

sanctions are incapable of serving. The fine, for instance, may fail to denounce harm against the person in the way that imprisonment can.[27]

Another problem is that formal, even legislative, changes to govern sentencing behaviour do not necessarily lead to the use of non-custodial sentences. Considering the resistance of criminal justice systems to change, change in laws governing sentencing cannot be guaranteed to be implemented as intended. Many structural obstacles such as workload and inadequate information about the offender can hamper their application. Judges will even shape penal policy to help them achieve their goals if there are not compelling reasons to change their goals to reflect policy.[28] The administrative problems associated with sentencing guidelines suggest their effectiveness depends in part on the judicial and administrative climate in which they are couched. If intermediate sanctions lack an acceptable ideology they are unlikely to be utilized.

The above criticisms question whether intermediate sanctions really do provide an alternative to imprisonment in terms of meeting certain sentencing objectives. Do they realize any rehabilitative benefits, presumably ones that are absent in prison sentences? Junger-Tas (1994) reports that available research indicates that supervision and treatment make rehabilitation a possibility. Certainly the work of Paul Gendreau and others (see Part V) would suggest that "something works". The question, of course, is debatable with the answers probably located somewhere in between the pessimistic and optimistic extremes depending on a number of factors. Moreover, such criticism overlooks the fact that depending on the circumstances, rehabilitation is not the only goal sentencing seeks to fulfil.[29]

Other evidence suggests that the reduction of imprisonment populations can occur independent of legislative changes. Reductions in the West German prison population, for instance, were largely due to changes in the behaviour of prosecutors and judges.[30] Nonetheless, the employment of intermediate sanctions is likely to increase in an accommodating criminal justice climate. As experiences in West Germany, the Netherlands, Canada, and Italy have shown,[31] broader movements and ideologies both on an institutional as well as a societal level, can significantly contribute to changes in incarceration levels.

On an institutional level, the Dutch practice of settling problems in extra-judicial ways, for example, would be conducive to decreasing prison populations[32]. Similarly, the primary role of the prosecutor in determining outcomes as well as the extensive use of the penal order in West Germany have contributed to the low use of incarceration. The Dutch 'culture of tolerance' and an Italian diffident

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[27] For some observers meeting certain sentencing objectives is besides the point (e.g., Morris & Tonry). These issues plague the use of any kind of disposition. Regardless of whether intermediate sanctions or imprisonment, for that matter, achieve their proposed goals (which may be seen as a separate issue altogether), what some seek is a fairer, more rational method of sentence distribution. In doing so, greater use of intermediate sanctions may be made.

[28] op cite 23.

[29] see Junger-Tas, 1994.

[30] Feest, 1991; Snacken & Beyens, 1994.

[31] see Downes, 1991; McMahon, 1992; Pavarini, 1994.

[32] see Swaaningen & Beijerse, 1993.

culture that is suspicious of repressive agencies are examples of the effects that societal culture can play in minimizing incarceration.

2. Greater Utilization of Existing Community Correctional Resources

There are two ways to reduce the numbers of people in correctional institutions short of closing them down. The first is to prevent offenders receiving carceral sentences in the first place; the second is to shorten the periods of time for which they are incarcerated. Intermediate and alternative sanctions, and community justice approaches that keep offenders in communities address the first; greater utilization of community correctional services addresses the second. There is some over-lap where attendance centres, intensive supervision and electronic monitoring may be used as either an alternative to incarceration or as a condition of release.

There is some evidence that some community programs work. Temporary absence programs and community residential centres are two examples showing high success rates. In many jurisdictions where prison populations are high other correctional settings such as halfway houses, are operating below capacity. Many prison inmates are suitable candidates for halfway house placement. In several jurisdictions prison administrators have the discretionary option to place inmates in halfway houses. This, however, is not a widespread practice.[33]

Programs that consider the specific social and cultural characteristics of the community and encourage substantial community involvement are more likely to be successful. Recognition of offender diversity is crucial.[34] An effective program carefully addresses any special needs of the offender, especially those of minority groups, and matches them with an appropriate program[35]. Further, this process, would be facilitated by including the offender's views of their needs and subsequent selection and design of their program. Finally, treatment as compared to punishment and control appears to be a more productive goal for increasing community intervention effectiveness.[36]

There is a strong argument for decreasing the use of incarceration and increasing community sanctions. Program evaluations show that programming is most effective with the medium risk group in institutions, and is less successful with low and high risk groups, largely because of type of offence and history of offending. Research also shows that generally programs delivered in communities are more successful than those delivered in institutions. This would suggest that for low and some medium risk group offenders, community rather than carceral sentences are indicated. Given the extensive use of incarceration in Canada, this would seem a fruitful direction to pursue.

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[33] see Bonta and Motiuk, 1990.

[34] e.g., Ekstedt & Jackson, 1986; Holosko & Carlson, 1986; Griffiths & Verdun-Jones, 1994; Griffiths, 1990.

[35] Gendreau, Cullen, & Bonta, 1994; Petersilia & Turner, 1993.

[36] Gendreau, Cullen, & Bonta, 1994.

Examples of Community Correctional Programs

There are a number of other community-based correctional options some of which are aboriginal-specific. These include bush camps and half-way houses. Among the most common mainstream alternatives to the use of imprisonment or to reducing time spent in institutions, are home detention/electronic monitoring, intensive supervision orders and attendance centres.

Attendance Centres:

Offenders are referred to attendance centres on the basis of a recognizance which is aimed at behaviour change. This change is to be achieved in two ways. First, offenders attend offence-specific courses designed to address offense-related needs and offending behaviour; and second, participation in skill-specific courses provide living and vocational skills. Taken together, these two directions provide a measure of both supervision and treatment which evaluation findings suggest have been the most fruitful in reducing reoffending.

Bush Camps:

Over the past two decades there has been a move to bush camps as a correctional option for both aboriginal and non-aboriginal offenders. It is commonly believed, however, that the benefits may be greater for aboriginal offenders because of their connection to the land and their preference for being in more rural or remote settings. The variation in aboriginal offenders themselves and the fact that no evaluations have been conducted to determine the value of the bush camp approach for any offenders, leaves these assumptions untested. Nor is there good information on how well individual needs are matched with bush camp programs, or of the quality of the programs themselves.

An innovative variant of bush camps for young adult offenders is occurring in Australia. These are called "Homeland Schemes" and the basic approach is one of removing young men to remote camps for training in bushcraft and traditional ways. It accords well with bolstering traditional resources in communities. Although not subject to formal evaluation, some evidence exists about the value of "bush camps" for petro sniffers in central and northern Australia. Major positive conclusions are that the use of camps satisfied demands for troublesome young men to be removed from the community without at the same time creating trauma for close kin; played some role in creating a reintegrative acceptance of these young people among elders; and improved self-esteem by providing young people with a useful role, a sense of belonging and confidence at being able to achieve valued tasks.[37]

Home Detention/Monitoring:

There are four kinds of home detention/monitoring involving varying degrees of supervision. These are: curfews added to probation or parole; correctional officer telephone calls or random visits; computer use for monitoring; and electronic monitoring. These can be court-based or

[37] O'Malley, 1993.

prison-based. At the present time an evaluation of electronic monitoring in B.C., Saskatchewan and Newfoundland is being conducted.[38]

In the state of Victoria in Australia, intensive supervision orders designed to meet the aims of deterrence through intrusiveness, reparation through emphasis on unpaid community work, and rehabilitation through its ability to provide treatment and special programs, are used. Victoria has also introduced an intensive parole program which requires all parolees to undergo more intensive and intrusive monitoring and supervision for a period of time immediately following their release. The objective is to provide levels of supervision and support commensurate with the risk of possible re-offending during this period. Other post-release programs for ex-offenders are aimed at coordinating education and employment programs to better address needs of aboriginal releasees. One jurisdiction uses a variety of programs, for example, a community-based residential program, an accommodation support service, an outreach counselling unit, and a range of other programs.

Community Correctional Centres:

There are two aboriginal-specific community correctional centres in Canada - the Stan Daniels Centre in Edmonton, and Waseskun House in Montreal. In addition, there are regular community residential centres which, while not aboriginal-specific, accommodate all offenders. Programs vary but most provide basic programs such as alcohol-related, counselling, life skills and assistance with employment.

An interesting example of a comprehensive approach to programming within a community correctional centre has been established in Queensland, Australia. The objective of the Centre is to integrate offenders back into the general community in an open environment which offers relevant and well-managed programs. A case management plan is developed for each person and three levels of programs operate. These are:

1. Programs Involving Community Service: - Services are provided by offenders to community-based non-profit organizations such as St. Vincent de Paul etc. These fulfill community reparation goals and the offender learns new skills which can be linked with education courses;

2. Offending Behaviour Programs - This program is based on individual needs. The behaviour and needs of each offender are examined and linked with appropriate programs or agencies - e.g. AA, anger management, assertiveness training, family counselling, literacy, effective parenting etc.;

3. Comparison Programs - This program is compulsory for all residents and is one evening a week. The program offers living skills, pre-release skills, and sessions on effective communication, relationship skills, personal growth and development, and stress management.

[38] This evaluation is being undertaken by Corrections Research & Development, Policy Branch, Ministry of the Solicitor General of Canada.

The Centre also provides assistance with parole preparation and the development of release plans. Residents can take jobs and pay board if employed. If not employed, they must do two days a week of unpaid community service. To date, 250 offenders have completed the program and only six absconded. The Centre has a high level of contact with the families of residents. The staff provide help to both the residents and families. Among the main weaknesses identified by residents and ex-residents in the evaluation[39] of the Stan Daniels Centre in Edmonton was that there was not enough family or community involvement.

Determining Appropriate Alternatives

There are some specific examples of ways of determining appropriate alternatives to incarceration and promoting community integration. At the forefront of these is Client Specific Planning (CSP) - 'a form of sentencing advocacy designed to punish, supervise, and treat prison-bound offenders in the community' which, when used, has had a positive effect in reducing the use of incarceration and jail time served.[40] It can also be applied at various stages of the criminal justice process. It differs from diversion and other alternatives as it is designed for those individuals who would serve a prison sentence. A case developer prepares a "Client Specific Plan" based on a thorough investigation into the client's social and criminal justice history. This plan includes sentencing options which have been explored and agreed upon by all concerned prior to drafting the plan. By first identifying needs and developing a sentencing option, the value of the alternative can be assessed rather than simply handing out an alternative sentence and "hoping for the best". A survey of 27 evaluations of CSP projects revealed, however, that as CSP represents a new paradigm shift, it is vulnerable to de-stabilization by traditional criminal justice institutions.[41]

Client Specific Planning is central to the alternative sentencing project "Restorative Resolutions" in Winnipeg and sponsored by the John Howard Society of Manitoba. The project involves the preparation of comprehensive, individually-tailored case plans which are presented to the judge at the time of sentencing. The plans are designed to make reparation to victims, address the needs of offenders, reduce recidivism, and contribute to the community. The offender is supervised by the Restorative Resolutions office. In this way, the 'community', through the project personnel and their activities in developing a plan, is able to pre-determine, based on an assessment of community resources and offender needs, how it may actively and realistically contribute to the sentence plan and to the required follow-up.

Criticisms/Limitations of Community Correctional Programs

The use of community programs has been justified as more humane and cost-effective alternative to incarceration and as a tool for reducing imprisonment rates. Based on program design and implementation, however, there is no consistent evidence to support these claims. The humanitarian dimension has been challenged on the basis that the numerous behavioural restrictions imposed in many

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[39] Native Counselling Services of Alberta, 1993.

[40] Yeager, 1992:1.

[41] ibid.p.117

community programs may be as coercive as confinement and in some cases, more punitive.[42] As far as being a cost-effective alternative to incarceration, Hylton (1982) notes that community programs, as part of the total social control apparatus, do not reduce costs for the system as a whole.[43]

As many community interventions tend to include offenders who generally would not be serving a confinement sentence in the first place, these programs are not true alternatives to incarceration. In addition, uncontrolled judicial discretion has undermined community program use.[44] Griffiths reports, for example, that Canadian judges tend to favour custodial to non-custodial sentences in their sentencing decisions. Lastly, as the U.S. General Accounting Office [45] notes "most programs have served a relatively small population of offenders. Programs that include *hundreds* of offenders cannot significantly affect prison populations that run into *tens of thousands*."[46]

Intensive supervision programs (ISP) provide an example of some of the general drawbacks discussed above. ISP emphasize the close monitoring and strict enforcement of rules for offenders placed in the community. They typically involve intense forms of surveillance such as more frequent contacts between offender and supervisor, drug testing and electronic monitoring, and require the offender to adhere to certain conditions like working, attending treatment or performing community service.[47]

ISP are supposed to be an alternative to incarceration without jeopardizing public safety as compared to traditional probation and parole. However, according to a 1986 U.S. Bureau of Justice Assistance study of 14 ISP sites in 19 states, ISP did not deliver the benefits associated with being an alternative to incarceration.[48] Programs did not reduce prison populations because the very stringent monitoring and enforcement of ISP conditions produced increased technical violations, sending offenders back to prison and jail. Moreover, judges were very reluctant to use ISP in their sentencing decisions, especially for more serious offenders.

Perhaps of most importance is the social control function of community sanctions. Feeley and Simon (1992) argue that in the U.S., probation and parole violations now constitute a major source of prison inmates and are expanding prison populations. They maintain that community-based sanctions are not instruments of reintegrating offenders into the community but are mechanisms of social control which put people back into prison. What should be the balance between the reintegrative and the social control functions of community corrections?

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[42] For a fuller discussion of these issues see Griffiths, 1990; Hylton, 1982; Petersilia & Turner, 1993.

[43] Many empirical issues need to be resolved in the calculations of cost-effectiveness before any firm conclusions can be drawn (Petersilia & Turner, 1993).

[44] see Griffiths, 1990; Morris & Tonry, 1990.

[45] 1990:2, cited in Petersilia & Turner, 1993.

[46] ibid:288.

[47] Gendreau, Cullen, & Bonta, 1994; Petersilia & Turner, 1993.

[48] Petersilia & Turner, 1993.

3. Local Justice

There is now a general acceptance of a legitimate role for communities in the criminal justice process.[49] In the correctional personnel survey, 35% of the sample believed community based options were a better alternative for aboriginal offenders, and 34% thought offenders should be released to their communities or to healing lodges. In the aboriginal context, "healing" has often become synonymous with community, relying as it does upon traditional aboriginal practices. It is also within this community participation paradigm that 'restorative justice' has emerged with its emphasis on eliminating a reliance on criminal justice personnel, on the role of the victim, and on "social" justice. In other words, the community replaces the state in dealing with offenders.

There are many examples of local justice in aboriginal communities across the country. These range from the Sandy Lake and Attawapiskat projects in Northern Ontario, to the Indian Brook Diversion project in Nova Scotia, the Aboriginal Legal Services of Toronto project, the Gitksan - Wet'suwet'en project in B.C., and the Community Holistic Circle Healing project in Hollow Water, Manitoba, among others. In addition, Family Group Conferencing in Newfoundland, and sentencing circles in the Yukon, B.C., Alberta, Saskatchewan, Manitoba and Quebec, are criminal justice system-centred approaches which directly involve communities. Community involvement is based on two premises. The first is the empowerment of communities (which may be linked to self-government aspirations); the second is that communities hold solutions to criminal justice problems and have the resources available to respond more effectively than the mainstream system. This growing reliance on local justice is, however, not without its critics.[50]

Community Justice Contradictions and Concerns

One of the major concerns is the potential for the goals of community justice to be competing and contradictory. These goals have been widely identified in the aboriginal community justice literature. On the one hand, community justice is about autonomy, empowerment and control (and for some communities within a self-government agenda). On the other hand, community justice is about tradition and, in contemporary terms, about "healing" and the transformation of communities into healthier states of being.[51] The reality, however, is that the primary goal of community justice is the exercise of social control, the use of surveillance, and the dispensing of "justice", which may or may involve punishment. While the goals of empowerment and autonomy may not be incompatible with the goal of self-government, those of community transformation and punishment are contradictory. Thus, the potential for community justice to divide rather than unite people, particularly where communities are small in size and geographically isolated, is great. The "cushions" against these divisions found in more traditional aboriginal societies, may be considerably diminished in contemporary communities.

The therapeutic value of community justice through improved communication and social relationships, and the availability of resources to support local justice systems have not received

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[49] see Griffiths *et al.* 1995; Paukuutit Inuit Women's Association, 1995.

[50] see LaPrairie, 1995; Depew, 1995; Merry, 1990.

[51] For a full discussion of popular justice in aboriginal communities see Depew, 1995.

adequate evaluation attention. Nor is it clear if a defined and commonly understood definition of community and commitment to community members, beyond the extended or the nuclear family, exists in most aboriginal communities. Given that local justice systems make certain assumptions about the nature of community, these are central issues. Moreover, the general lack of resources in aboriginal communities signals possible difficulties in sustaining local justice systems. Depew (1995:26) argues for "a more far-reaching and challenging strategy of community development, social change and macroprevention" rather than a narrow focus on justice projects.

Are people and communities misguided in turning to the criminal justice system to solve community and social problems? Fattah (1993) and Snider (1995b) believe that for some offences they are. In promoting a decrease in the growing dependence on criminal sanctions in cases of family violence, Snider argues that the criminal justice system lacks transformative potential because it fills different ideological and structural roles than other mainstream institutions. It functions to further social control and to coerce. Dependence on it may disempower rather than empower communities and individuals (p.28). In the broader sense, given the social and economic changes in aboriginal communities, exposure to the mainstream criminal justice system and the reproduction of the dominant social structure in communities (as described in Part IV), will community justice and greater control over offenders and offences have the capacity to transcend these ideological and structural constraints? This is the real challenge for community justice, and research to answer some of the questions community justice poses will require a long-term, ethnographic approach rather than the standard evaluation one which relies almost exclusively on interviews with key players.

4. Imprisonment

Once aboriginal offenders who do not need incarceration are eliminated from the carceral population who is left and what is to be done with them? A number of issues which will most affect this group require identification and discussion. These include understanding criminogenic factors and risk/needs, matching needs with and determining intensity of programs/treatment, and doing adequate follow-up and evaluation to determine which approaches are most suitable.

To begin with, institutional classification for security and treatment purposes that relies on objective scales rather than personal interviews as proper assessment and classification of offenders are key to effective corrections. The challenge is to assess the needs of aboriginal offenders to determine the fit between needs and treatment. In addition to standard risk assessment factors, other factors which might be considered for aboriginal offenders are community of origin (i.e. isolated, remote, semi-urban, urban), size of community in which majority of life spent, length of time in semi-urban/urban setting, degree of exposure to culture, and degree of involvement in traditional economy (hunting, trapping, etc.).

Another critical problem in institutions is getting aboriginal offenders to participate and remain in programs designed to help them. Intensive "pre-treatment" programs may enhance program participation but more evaluative work is required. There is also a need to evaluate sex offender treatment programs for aboriginal offenders. A major challenge for corrections also lies in the staff training area. Inevitably it seems, most correctional staff working with aboriginal offenders

will continue to be non-aboriginal, and it is important to know what types of staff training will improve staff effectiveness with aboriginal offenders and what will make things worse.

Perhaps there is also a need to consider the value of aboriginal-cultural specific programming beyond the narrow confines of programs. The obvious example is that of the three stage "therapeutic community" model developed for drug treatment in the U.S.. The therapeutic community is a total treatment environment isolated from the rest of the prison population. Drug recovery depends on positive and negative pressures to change through a mutual self-help process. Ideally it should involve three stages. The primary stage is within the prison for a period of 9-12 months and involves comprehensive individual and group therapy.[52] The second stage is a "transitional" therapeutic community work release centre or halfway house, where a process of resocialization involving work but in the same "family setting" as in the first stage. The third stage, the "tertiary" stage, involves living in the community under parole or some other surveillance program where out-patient and group therapy continues through the work release therapeutic community of stage two. This approach should be used for offenders who are within 18 months of their release dates. Follow-up research demonstrates positive results for both males and females with drug problems but particularly for females.[53]

Could the therapeutic community model described above be adapted to a culture-specific model? A critical problem with aboriginal-specific programming as it now exists in the majority of institutions (the exception being the Healing Lodge for aboriginal female offenders) is that while a type of therapeutic community is created within the prison it does not extend beyond it. For this reason, it is unlikely that the full benefit of a therapeutic community such as described above can be realized. In order for cultural specific programming to have long-term benefit, involvement within the institution should adhere to the principles of individual need identification, risk assessment and responsivity, as well as to the second and third stages of the therapeutic model as identified above.

In the final analysis, if it is determined through controlled evaluation that cultural/spiritual programming has merit for aboriginal offenders, by addressing individual needs and/or by providing a therapeutic community, both within and outside the institution which reinforces anti-criminal values, this will be a fruitful and important direction to pursue for non-aboriginal offenders as well. The emphasis for mainstream offenders has been primarily on cognitive needs where commonly accepted treatment approaches, involving life skills and behaviour modification, have prevailed. The addition of a cultural/spiritual treatment component for mainstream groups of offenders is an exciting possibility. In the interim, however, aboriginal-specific programs should be complemented with intensive pre-treatment programs. This approach also requires evaluation.

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[52] The pre-release component is consistent with the mandatory Pre-start program advocated by Castellano *et al* (1995).

[53] Inciardi, forthcoming 1996.

Reducing Recidivism and Promoting Reintegration

The evaluation literature demonstrates that intensive supervision and monitoring must be combined with treatment to reduce re-offending. Treatment aimed at employment, addictions and family problems is significantly related to a reduction of reconvictions, therefore, particular attention should be paid to substance abusers, employment problems and family/relation conflicts. These are especially appropriate areas for aboriginal offenders.

Minimizing the effects of imprisonment by promoting family and community links and establishing new and improved ties with the outside world, movement through institutions with decreasing security levels and size, and socio-economic conditions on parole, have been related to reduced levels of recidivism. Some commentators stress economic stability as the most critical factor. In their survey of imprisoned women in California, Owen and Bloom (1995) conclude that alternatives to imprisonment are necessary given the fact that 60% of the women were incarcerated for non-violent offences, and that community-based sanctioning and programs that address problems rather than exacerbate the marginality of this group are required. While personal development programs such as recovery, abuse survival counselling, parenting and family reunification program are critical for this marginalized group of women, "economic self-sufficiency is the cornerstone to success after imprisonment".[54]

For offenders with the option of returning to a community which provides assistance and support, community involvement becomes a therapeutic service. For those without, it may be necessary to create a supportive environment. This could be accomplished by assigning community people to assist the offender and facilitate his or her use of community resources. Geographic location of the community is less important than the interest, involvement and willingness of family and community members to become involved in the reintegration process. As stressed in the previous chapter, reintegration into community groups with pro-social values is also critical in effecting behaviour change.

The PreStart Program pioneered by the Illinois Department of Corrections shows considerable promise. It is comprised of two phases - mandatory pre-release education and programming, and post-release assistance. It de-emphasizes the surveillance and supervision functions of parole, and emphasizes referrals to newly-created community service centers (operated by Corrections) designed to help releasees get job, housing and treatment assistance. Initial evaluations involving a one-year follow-up of participants show lower levels of recidivism.[55]

Family Group Conferencing used extensively as a diversion tool in New Zealand and Australia could be adapted to assist in the reintegration of released offenders. Given repercussions from offences (particularly when serious) in small communities where people are joined though kinship and familiarity, a strategy to bring the issues into the open and the families of offenders and victims together to discuss the terms and conditions of reintegration, may be useful. This approach involves participation from offenders, victims, and those individuals with legitimacy in

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[54] Owen and Bloom, 1995:185.

[55] see Castellano *et al*, 1995.

the eyes of offenders and victims. This 'community of care' would determine the process and terms of reintegration.

In a similar vein, the Church Council on Justice and Corrections has recently put forward a draft proposal for assisting federally sentenced women to reintegrate into communities upon release. A "community justice group or circle" is set up at the time of sentencing, initiated by local police or a community justice worker. Various individuals representing the offender, victim and community participate. The group meets after sentencing to develop a plan to respond to the needs of the offender on release, as well as the existing and future needs of the victim. This plan would be approved by all concerned and contact with the offender would occur during the period of incarceration. Other elements of the plans would be activated upon release of the offender.

Reintegration of aboriginal offenders usually implies reintegration into aboriginal communities. However, the fact that many aboriginal offenders are urban dwellers suggests the need to explore reintegration within a wider context. Reintegration in urban areas may go hand in hand with the creation of a therapeutic community, so that offenders without community ties or interests have a community to which to return.

Christie (1989) maintains that when people leave institutions for whatever reason, particular dangers confront them which may lead to homelessness. People without good alternatives tend to end up in the centre of large cities where welfare workers and rooming houses are available. There is also a tolerance in these areas for them. Nice neighborhoods do not want them and suburbanites close ranks. Because the centres of cities are often run down and relatively uninhabited, there is room for them and they can create some sort of segregated quarters. But here they are serviced by professional "helpers" to whom they are always in an unequal situation of indebtedness rather than an equal partnership as friends.

The ability to transfer the aboriginal therapeutic community created in the institution to the outside, while encouraging offenders to participate in programs to improve their education, employment, life skills, cognitive reasoning and other needs, may have the most potential to affect change for urban dwelling aboriginal offenders.

Summary

A substantial reduction in the reliance on imprisonment is most likely to occur with sweeping systemic changes whereby both legal and administrative capacities are aimed at increasing the use of intermediate sanctions. As well, the use of diversion programs and the decriminalizing of certain offences are likely to reduce the burden on the courts in determining outcomes and sentences. A comprehensive community corrections act as well as a permanent sentencing commission might be a starting point for such changes as well the assurance that they are properly implemented and administered. It is imperative to actually use alternatives in order to make a difference in imprisonment levels, and to re-focus community sanctions so they are designed to assist offenders to reintegrate into communities, and not as mechanisms of social control that are designed to put

people back into prison. Finally, these changes must be made acceptable to the community and the criminal justice system so that they are legitimized and have full support.

Matching needs with institutional programs and treatment, and conducting evaluations of programs are essential to effective programming and to promoting release. Community correctional approaches such as attendance centres, intensive supervision, electronic monitoring, bush camps, should be evaluated to determine their value for aboriginal offenders and for different groups of aboriginal offenders.

Although criticisms of alternatives, community corrections and community justice have been identified, this is not intended to reinforce the status quo or to argue for more severe sanctions. Rather, these criticisms highlight the way alternatives have been used and the often unrealistic expectations of community corrections and local justice given scarce resources and inflexible objectives. Ultimately, however, regardless of problems with these alternatives they are still as effective and less costly in human terms, than more punitive ones like imprisonment. The challenge is to broaden their use, monitor their delivery, and refocus them so they meet more humane objectives.

We do not have to look far to see the potential for reducing incarceration in Canada. There is considerable variation across the country in the way incarceration is used and provinces such as Ontario and B.C., which have large aboriginal populations but less disproportionate levels of aboriginal incarceration, have maximized the use of non-carceral dispositions, especially for fine default, public drunkenness and other minor offences. Other provinces, such as Alberta, appear to have a heavier reliance on the use of incarceration which is not explained by the seriousness of the offences committed. However, it should be re-emphasized that the Prairie provinces, Alberta, Saskatchewan and Manitoba, also have the largest and most marginalized aboriginal populations. It is unreasonable to expect the criminal justice or correctional systems to redress this problem. But it is reasonable to expect they will not exacerbate it either.

Perhaps the most critical and immediate direction to pursue is to mount a campaign to educate the public about reducing the reliance on imprisonment and about using other methods of punishment. Educating the public to be more supportive of intermediate sanctions as "real" punishment is essential because, as Garland points out, the meaning of a punishment is embedded in the culture in which it is imposed.[56] This is reflected in the use of community corrections as instruments of social control rather than of offender reintegration. Programs such as the PreStart and Conferencing, which have the potential to meet real needs of offenders and promote reintegration and not more punitive criminal justice objectives, should be implemented. This suggests the need for change in emphasis and direction at the level of correctional policy.

In their desire to read the public mood, government departments have focused on polling the public about their opinions and perceptions of a number of criminal justice issues. What has been learned is how misinformed the public often is about these matters.[57] This is particularly disquieting in light of the fact that as Braithwaite (1993:11) observes, "exclusionary and stigmatic

[56] Cited in Doob and Marinos, 1995:433.

[57] see Roberts, 1994.

criminal justice policies have staged a comeback". Perhaps it is now time to begin a massive re-education of the public about myths and realities of criminal justice and corrections. Most importantly, the public should realize the limitations of prisons in the resocialization process. One way to combat the trend toward punitiveness and to reduce crime is to increase interdependency among people. To quote Braithwaite (1993:12) "When relationships between two classes shift from stigmatization to interdependency, interclass shaming is more likely to be heeded". Where responsibility for offenders and offending expands beyond the boundaries of police, courts and prisons, the public cry for revenge may be stilled.

PART IX. CONCLUSIONS

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The criminal justice system remains rooted in a reliance on the use of imprisonment which affects both aboriginal and non-aboriginal offenders alike, and places Canada among the highest users of incarceration in the world. How much this reflects judicial attitudes and/or the culture in which the Canadian criminal justice system functions, is debatable. The degree of ostracism and stigmatization directed toward offenders suggests the reliance on imprisonment by the criminal justice system is reflected in public support and is, therefore, an integral part of Canadian society. Despite the most eloquent arguments put forward by criminologists Nils Christie, Thomas Mathiesen and others, offenders are generally denied a place in the "good" society. We speak reintegration and practice exclusion and stigmatization. We continue to incarcerate offenders who are low risk and for whom imprisonment is unlikely to be more beneficial than other sanctions, and probably does more harm than good.

Aboriginal criminal justice initiatives and interests, in conjunction with the broader movement of restorative or popular justice, give some optimism that other ways of dealing with crime and offenders are possible. In addition, the growing body of correctional information about "what works" and for which offenders, reveals that programs delivered in a community setting are more likely to be successful than those in institutions, and that when properly matched, programs are most likely to be beneficial to the medium risk offenders - the majority of inmates. A commitment to other approaches and a different philosophy about the way in which offenders are responded to, are required. It is also necessary that community-based sanctions are used more as instruments of reintegrating offenders into the community and less as mechanisms to maintain control and revoke offenders on probation and parole.[1]

The criminal careers of low and medium risk aboriginal offenders often make them appear more serious offenders than they really are. For many marginalized aboriginal people, and especially those in provincial systems serving fine defaults, probation and other administration of justice violations, and a multitude of minor offences, offending is part of a lifestyle which evolves around alcohol, peer group associations, lack of hooks into mainstream society, and a general climate of dysfunction. It is essential to respond to the offences committed by these groups in the broader context of their social and health problems. In the use of imprisonment and programming/treatment within institutions, serious offenders should be distinguished from less serious offenders and responded to accordingly.

How can the over-representation of aboriginal people in correctional institutions be reduced? The following steps might be considered:

The first step in is to make a commitment to a different kind of justice which does not use the criminal justice system to deal with social problems. The second step is to change philosophy about alternatives to incarceration and who is eligible for them, and to use them always in the first instance and prisons in the last. The third step is to prohibit the use of incarceration for certain

[1] Feeley and Simon, 1992.

offences such as fine default, public order, administrative offences, and various kinds of parole and probation violations. The fourth step, for those individuals who do receive carceral sentences, is to have a solid understanding of the offender's needs and fit these with institutional programming and community resources. The fifth step is to ensure quality and quantity of institutional programs. The sixth step is to make community corrections a reintegrative tool rather than simply a mechanism of social control. The final step is to understand regional variation in aboriginal over-representation in the correctional system, in the demography of aboriginal populations, and in the way the criminal justice system processes aboriginal and non-aboriginal offenders, in order to direct resources to the provinces, aboriginal communities, and populations most in need.

1. Causes of Over-Representation

Differential criminal justice processing and type of offense:

Knowledge of criminal justice processing of aboriginal people is limited, particularly in relation to charging, bail, and prosecution, but information about sentencing decision-making is more complete. Generally, aboriginal offenders, particularly those federally sentenced, receive shorter sentences than non-aboriginal, even when controlling for type of offence. At the same time, however, incarceration is used more often than community corrections for aboriginal offenders at both the sentencing and the release stages. This is due, in part, to the more adverse conditions in their lives.

Little information exists about the potential for over-policing in what police define as "problem" areas in cities, and the differential charging of aboriginal people. Nor is information available about prosecutorial decisions regarding bail or prosecutions affecting aboriginal offenders. There is undoubtedly variation across the country but it is critical that provinces, and particularly those with the highest levels of aboriginal incarceration, explore whether there is unwarranted bias in how decisions are made which unnecessarily disadvantages aboriginal people or offenders. Over-policing may be a response to social problems in the most marginalized city areas where more appropriate services are unavailable. Unfortunately, however, the end result may be the criminalization of problems such as alcoholism, homelessness, family disputes, etc..

An examination of federal and provincial correctional data reveals some consistency in the way the correctional system responds to offenders, whether aboriginal or non-aboriginal. Type of offence, prior record and level of risk posed, generally dictate sentence and release outcomes for both groups. One exception is the shorter sentences for federal aboriginal offenders, particularly in the Prairie and Pacific Regions even when controlling for type of offence and considering that aboriginal offenders are over-represented in more serious offences. Where aboriginal/non-aboriginal differences exist, such as lower federal parole release rates for aboriginal offenders, the explanation lies in the risk assessment and seriousness of the offence committed. Shorter sentences for federal aboriginal offenders but longer incarceration, suggests that the National Parole Board, in taking risk factors and type of offence into account when making parole release

decisions, results in longer periods spent in incarceration notwithstanding shorter sentences. Although significantly more aboriginal offenders are incarcerated than on community supervision for Schedule 1 and 2 offences, they commit significantly more offences (i.e., manslaughter and assaults causing injury) for which incarceration would be indicated.

Risk/need and recidivism levels and recidivism are generally higher for aboriginal federal offenders in comparison to the non-aboriginal group. When comparing how long offenders have served before being released, aboriginal offenders are released earlier than non-aboriginal offenders. This is directly related to the fact that aboriginal offenders are getting shorter sentences. However, when the sentence length is factored in with the amount of time served, aboriginal offenders serve a greater proportion of their sentences. These findings suggest that sentence length is a more important factor than race in determining amount of time served. Release may be more difficult for aboriginal offenders to attain because of higher community risk/need assessments; and greater difficulty formulating release plans because more come from dysfunctional backgrounds, have less education and employment skills, and less community support.

Differential impact of criminal justice policies and practices:

Criminal justice policies and practices such as the use of imprisonment for crimes involving public order, administration of justice and fine defaults, disproportionately discriminate against the most marginalized aboriginal groups. Similarly, decisions about the use of community alternatives over incarceration depend on certain principles and practices of sentencing where determinations of risk are related to support from family and community, employment, education and lack of substance abuse problems. A dependence on these factors in making sentencing decisions can seriously limit the chances of aboriginal offenders to non-carceral sentences. Data presented in this report suggest aboriginal offenders have difficulty gaining parole because of the kinds of offences they commit, but this is compounded by their difficulty in developing appropriate release plans because of the generally unhealthy state of or lack of communities to which they can return. This was emphasized by both correctional and community people.

2. Programming in Institutions

All offenders share some characteristics in common. These include factors such as family dysfunction, poverty, school experiences, peers, childhood violence and victimization, that promote criminal conduct and anti-social attitudes. Aboriginal offenders are distinguishable on three dimensions - degree of exposure to these factors, geography, and culture. There is variation among aboriginal offenders themselves as to how much each of these factors differentiate them. However, despite a lack of empirical evidence that aboriginal offenders are less exposed to their culture than a comparable group of aboriginal non-offenders, or that their differences from the general offender population are greater than their similarities, culture has become the main focus of programming. Notwithstanding this, little information exists about the impact of cultural programming on recidivism, or on inmate's lives after discharge from the institution.

Although little evaluative work has been done on aboriginal-specific programming, one of the most commonly-voiced attributes of the approach is that it provides aboriginal offenders a sense of self-identity and who they are. It also furnishes them with membership in a group of people with whom many share life experiences and experiences of being aboriginal. They may feel less judged and, therefore, more willing to speak out In these ways the group may create a therapeutic community. Given the life circumstances and backgrounds of many aboriginal offenders, this may be one of the few times they have experienced such an environment of acceptance. The fact that in some institutions aboriginal groups exercise considerable authority, may enhance an individual sense of power.

We have little to add to what was said in Part V where mainstream and aboriginal programming were examined in some detail. We reiterate that the key to effective aboriginal programming is the identification of risk and needs of offenders, and the blending of the cultural with the mainstream, that is, using the cultural to provide the most appropriate context in which to deliver the most effective treatment approaches. This is the "responsivity" element which is a central component of an effective treatment strategy. Offenders differ in their responsiveness to certain programs. The type, style and mode of programming/treatment should correspond with the learning characteristics and the cultural understanding of the offender. The cultural option should be open to offenders to accept or reject and be one of a number of factors to consider in determining the most appropriate way to deliver programs.

We would also emphasize that the extent to which the existing aboriginal-specific programs accommodate findings about program effectiveness for the general offender population, such as correcting fundamental reasoning deficits through social cognitive skills training, recognition of individual differences among offenders, more intensive services for higher risk offenders, corresponding style and mode of treatment to the learning characteristics of offenders, the integration of programs to address each of the offenders' problem areas, and proper implementation and administration of programs, must be determined. There is also little value to identifying needs and effective programs if there is not an institutional commitment, a positive climate, and adequate resources to ensure programs can be properly delivered. With smaller inmate populations, the program and institutional goals may be more achievable.

Based on existing information there is evidence that a three-pronged approach to the treatment of aboriginal offenders should be considered. The first approach is to provide intensive pre-programming so that aboriginal offenders can derive the maximum benefit from mainstream programs, particularly those involving education, cognitive behaviour and life-skills. The apparent success of the alcohol pre-treatment program for aboriginal offenders and the fact that research has identified the personal dysfunctions of aboriginal offenders as being more extreme than for the non-aboriginal group lends support to this recommendation.

The second approach is to continue cultural and spiritual content programs for those offenders wishing to participate in them, as these programs appear to attract aboriginal offenders and to give them a sense of identify often sorely lacking.

The third approach is to deliver the most effective programs within the proper context which depends on understanding the needs and realities of individual offenders.

In adopting the three-pronged approach, the needs of aboriginal offenders, including the need to be less isolated from non-aboriginal offenders, are more likely to be addressed.

The focus of any correctional policy should be the reintegration of the offender into the community where the community provides support and assistance. There has not been an allocation of funds or resources to develop the necessary support network. For both men and women, pre- and post-release programs are essential to reduce re-offending, particularly programs that respond to housing, substance abuse, and employment needs. More general programs, such as those which enhance parenting knowledge and skills, are also important. Community justice or advisory councils may be useful in assisting in the creation of necessary programs. The availability of such programs at the community level would address individuals needs while promoting reintegration. It may be unrealistic to expect communities to welcome offenders back without evidence that their behaviour has changed. At the same time, however, changes in aboriginal communities that address their most pressing needs must also proceed before they can be expected to respond more effectively to the needs of offenders, through adjudication, supervision or reintegration, or by participating in diversion and sentencing plans.

3. The Politics of Aboriginal Justice

What are the political elements of aboriginal corrections? Over-representation has generally been attributed to racism and discrimination in decision-making even though empirical evidence for this is lacking. However, the political sensitivity of the disproportionate incarceration of a group historically colonized and contemporarily marginalized, has strongly influenced reform measures. This is evidenced in correctional conferences and public discussions on aboriginal justice which are often as much about transformative politics as about criminal justice policy. Are aboriginal offenders increasingly identifying themselves in political terms and is this reflected, in part, in refusal or reluctance to participate in programs and treatment?[2] If so, this may affect their potential for rehabilitation.

Where are aboriginal communities in all of this? Is there a dissonance between what bureaucrats and politicians and communities want for aboriginal offenders? Has the reintegration of offenders and community-based justice movements been largely political in nature, tied as these issues are to aboriginal self-government and control over justice matters? In the anxiety of government to reduce levels of aboriginal imprisonment and to improve levels of release, is a disservice to both individual offenders and aboriginal communities being done? What is the real role of communities in the development and implementation of correctional policies and programs?

Findings in this research suggest that in some respects "the tail has been wagging the donkey" particularly in federal aboriginal corrections. Macro-level aboriginal political objectives for control

[2] A study of the detention provisions of the *Corrections and Conditional Release Act*, which provide reasons for confirmation of detention since their original hearings, revealed that more aboriginal than non-aboriginal inmates refused to participate in programs and treatment (CSC & NPB, 1995).

over justice and political transformation have, to some degree, obscured the micro-level issues of high risk aboriginal offenders and problem communities. It is these issues which perpetuate over-representation and will continue to plague criminal justice systems, whether mainstream or aboriginal-controlled. Unless the most vulnerable communities become less criminogenic and crimes of violence are reduced, the criminal justice system will continue to be a major player in the lives of many aboriginal people.

Although the similarities between aboriginal and non-aboriginal offenders may be greater than the differences, problems facing aboriginal offenders are more severe and have an historical and cultural dimension that does not exist for the non-aboriginal offender. Many of the historical legacies and contemporary realities shaping aboriginal offending patterns also shape aboriginal communities. Community justice must, therefore, be located within the reality of communities and within the limitations of any criminal justice system to promote transformative processes.

4. Corrections in a Multi-Racial Society

What is the future of corrections in an increasingly multi-racial society? How should racial differences be identified and emphasized in programming to ensure the full range of individual needs are captured, whatever the aboriginal or ethnic membership of the individual? Should these be individual or group-focused? What is the potential now and in the future for correctional institutions in Canada to deal with the growing ethnic and racial diversity of the inmate population?

In a review of race and the criminal justice system, Roberts and Doob (1994) argue that the issue of race will become increasingly important to the criminal justice system as the Canadian population becomes more multiracial. They maintain that while aboriginal people have, to date, been the most obvious minority group in the Canadian criminal justice and correctional systems, the numbers of other minority groups such as blacks and Asians is increasing rapidly in some provinces. For example, although the number of aboriginal people admitted to B.C. correctional institutions is known the number of Asians is not, even though there has been a dramatic increase in the Asian population in the province. In this context, Alvin Toffler would argue that the existing correctional institutions are a "second wave" response to "third wave" problems and this will become increasingly apparent as the population in prisons becomes more diverse.[3] The response of correctional institutions and of policy makers to aboriginal pressures for reform from within (from Native Brotherhoods and Sisterhoods, for example) and without (in demands for the creation of independent aboriginal-controlled justice systems), has not been to examine the need to reshape correctional institutions to better reflect a new Canada, but to accommodate these pressures by creating special status groups within the institutions. This approach, however, ensures the continuance of the institution in its "second wave" form.

Concluding Remarks

[3] This concept was borrowed from a paper by Philip Stenning (1995) which provides an analysis of Toffler's hypotheses and its implications for policing.

A return to the central issue of this report leads us to ask about the future of aboriginal justice. Aboriginal people in Canada are in the process of transforming their relationship to the dominant society and the Canadian state. Self-government is a tangible product of this transformation. It may assist reserves to become more economically viable, self-sufficient, self-respecting and respected components of the Canadian landscape, while at the same time, promoting the creation of more just and democratic societies. In urban areas, community development and planning are required to lessen the potential for long-term, intergenerational residence of aboriginal people in poor, ghettoized, inner city areas. Such changes on and off-reserve, may reduce the involvement of aboriginal people in the criminal justice and correctional systems more so than any criminal justice-specific policies and programs.

Ultimately, however, we are left with the question of the type of social control to impose to achieve order, regulation, stability and protection without infringing on individual liberty. Cohen (1995) argues that in achieving these goals we are not talking simply about effectiveness (instrumental success) but also about justice (normative success). In identifying guidelines for determining success where the ends are social justice, democracy and human rights, which are subject to normative rather than empirical evaluation, he writes:

> *Here, we might each make our own list. Mine would include a preference for methods that result in integration rather than exclusion; that (following Nils Christie) abolish or reduce to the minimum the amount of deliberately inflicted pain; that allow for active citizen participation; that reduce the power of professional and bureaucratic monopolies; that provide for accountability and democracy within the organization, and so on (Cohen, 1994:85).*

Do aboriginal people and communities want to continue along the present path of using prisons? In tracing the history of penology and sociological perspectives on punishment, Garland (1985,1991), observes that Durkheim saw prison as a moralizing mechanism; Marx as a component of class rule; Foucault as an exercise in knowledge and power, and Elias as an enacted cultural form. Garland believes that a multi-dimensional approach best explains the use of penal institutions in Western society. Prison must be viewed as a complex institution which serves both penal and social functions and has social support in doing so. It has never been successful in reducing recidivism or preventing crime, yet support for the prison as an institution remains solid. Garland argues this is so because "the prison supplies a subtle, situational form of violence against the person that enables retribution to be inflicted in a way that is sufficiently discreet and 'deniable' to be culturally acceptable to most of the population".[4] He concludes that all punishments regularly fail to reduce crime because:

> *....as Emile Durkheim and others have pointed out, it is only the mainstream processes of socialization (internalized morality and a sense of duty, the informal inducements and rewards of conformity, the practical and cultural networks of mutual expectation and interdependence etc.) that are able to promote proper conduct on a consistent and regular basis (Garland, 1991:158).*

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[4] Garland, 1991:59.

Where should a civilized society put its resources? Punishment or prevention?

LESSONS LEARNED

1. That it is critical for programming and other purposes to recognize differences among aboriginal and non-aboriginal offenders, and differences among aboriginal offenders themselves, such as exposure to and interest in spirituality and culture, background experiences, and what they perceive as their own problems and needs;

2. To properly assess aboriginal offenders in relation to problems, needs and risk levels;

3. To recognize the special needs of many aboriginal offenders, i.e. lack of education and contact with non-aboriginal people, and, therefore, to encourage involvement in programs by providing intensive pre-treatment programs;

4. To ensure that aboriginal offenders have access to programs that meet their particular problems and needs;

5. To select and train staff to work with aboriginal offenders who will understand the full range of their needs and realities, and will be respectful, supportive, encouraging and non-judgmental and develop a stable relationship with offenders;

6. To monitor quality and delivery of correctional programs available to aboriginal offenders in the institution and in the community;

7. To ensure that the principles of program effectiveness used in the general inmate population are applied to aboriginal offenders;

8. To address each of the offender's major problem areas in a integrated programming fashion;

9. To fully inform and give aboriginal offenders the option of selecting the range of treatment programs available in the institution and/or community setting;

10. To create a "therapeutic community" for aboriginal offenders in institutions and on the outside to provide them encouragement, friendship, identity and support;

11. To recognize that offender reintegration in communities is dependent on community well-being, and that positive reintegration involves changing behaviour and identifying with people with pro-social attitudes;

12. To emphasize the importance of addressing both urban and reserve community needs for purposes of crime prevention and reintegration;

13. To encourage community development in aboriginal communities which takes into account the need for communities to feel safe as a prerequisite to reintegrating offenders;

14. To ensure that a structure is created in community for offender upon release;

15. To encourage community involvement with returning offenders so families are not isolated;

16. To assist families of offenders to change own behaviour.

ABORIGINAL CORRECTIONAL RESEARCH AND EVALUATION DIRECTIONS FOR THE FUTURE

There are a number of major monitoring, research, and evaluation activities which should be implemented over the next few years. They are set out as follows:

1. Monitoring Activities:

- Monitoring and analyses of admission, release, counts, sentence length, release data and community corrections data to ensure availability of most current information for policy and programming purposes;
- Monitoring of the delivery, quality and quantity of aboriginal-specific and mainstream programs available to aboriginal offenders in all provincial and federal institutions, including the Healing Lodges for aboriginal women;
- Monitoring of the proportion and characteristics of aboriginal offenders in provincial and territorial correctional institutions participating in aboriginal-specific and mainstream programs;
- Monitoring of attitudes of and issues raised by institutional administrations in regard to aboriginal-specific programming; support for programs within institutional environment.

2. Special Studies

- Regional and provincial/territorial variation in cultural and structural characteristics, and risk/needs of incarcerated aboriginal offenders;
- Regional and provincial/territorial variation in demographic, offence and sentence characteristics of aboriginal offenders in correctional institutions; and in the criminal justice processing of aboriginal and non-aboriginal accused (may conduct select small-scale aboriginal and aboriginal/non-aboriginal comparisons of charging, prosecutions and convictions by offence type and across jurisdictions);
- Comparisons of risk factors in re-offending for various aboriginal offender groups, including treaty and non-treaty, on- and off- reserve, and urban, rural and remote ;
- Literature review of models of reintegration of released offenders and implications for aboriginal offenders;

- Comparative and regional aboriginal and non-aboriginal opinion surveys about the use of imprisonment and about various alternatives to imprisonment.

3. Evaluation Activities:

- Implementation and evaluation of intensive pre-programming approach as a principle of treatment philosophy and as a precursor to participation in and completion of educational, employment and other programs;

- Evaluation of philosophy and quality of existing aboriginal-specific programs with reference to the individual needs of aboriginal offenders;[5]

- Evaluation of aboriginal and non-aboriginal staff effectiveness with aboriginal offenders, including selection and training;

- Long term follow-up of aboriginal offenders completing cultural programming in correctional institutions, including the Healing Lodges for aboriginal women and CRC's, in relation to reoffending, provision of a therapeutic community inside and outside the institution; adoption of pro-social attitudes, reintegration and improvement in family and community life; involvement in employment, education, recreation programs; and whether aboriginal-specific treatment programs meet range of needs of offenders other than cultural/spiritual needs. (Follow up aboriginal offenders who complete aboriginal-specific programs and a matched group who has not participated in such programs).

- Effectiveness of various alternatives to incarceration such as attendance centres, community service, intensive probation supervision (IPS), electronic monitoring, bush camps etc. for various groups of male and female aboriginal offenders;

- Evaluation of various reintegration approaches.

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[5] Various community reintegration philosophies and approaches should be explored for aboriginal offenders. for example, the Stan Daniels Centre and Waseskun House are cultural/spiritual in orientation and group focused; whereas in Australia the Community Corrections Centre is more individually focused and make more direct connections to community services and agencies. There are similar components to programs i.e.,- life skills, family dynamics, addictions etc. but whereas the Australian and general Canadian CRC programs are geared to assessing and addressing individual needs, the aboriginal specific programs are based on certain assumptions about cultural and spiritual needs of the group.

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APPENDICES

APPENDIX I: FIVE PROVINCES DATA METHODOLOGY

APPENDIX I

Methodology:

For purposes of comparisons within and among provinces, aboriginal and non-aboriginal data on gender, age, offence type, admission (sentenced and remand), sentence length, release, bail supervision, probation, parole, and recidivism for the years 1988-1995, were requested from five provinces - B.C., Alberta, Saskatchewan, Manitoba and Ontario. There was considerable variation in what was provided. The aboriginal and non-aboriginal data within each province can be compared subject to collection peculiarities within each province. The discussion below describes the dataset and categories used in the analysis. The limitations of the cross-jurisdictional analysis will be obvious to the reader.

1. Overview

B.C. met all data specification for all data elements requested for the years 1988-1995. The next most compete set of data elements was provided by Manitoba, but who at the time of the request for data were unable to provide bail supervision data or a full year of sentenced admissions for 1995-96. Ontario data are missing for all categories for the years 1988-89, and only 10 months of 1991-92 are available. Alberta provided seven years of data but bail supervision, parole and probation are missing across the dataset. Saskatchewan was able to provide only two years of data (1993-1995), and the data on bail supervision, probation and parole are limited.

2. Categories

a. Sentenced Admissions:

Manitoba, Ontario and Saskatchewan base type of offence data on most serious offence, whereas B.C., Saskatchewan and Alberta data use total offences. In Alberta and Saskatchewan, sentence length is also offence-based whereas in the other provinces it is offender-based (i.e., most serious offence). Three additional elements were supplied. Manitoba provided information on sentences served intermittently; Alberta on education, employment and offences by sentence length for sentenced admissions; and Saskatchewan on number of offences. Alberta and Saskatchewan federal offenders who serve their sentences in provincial institutions are included in the sentenced admissions dataset because it was difficult to separate out these offenders, but these are separated in the other provincial datasets.

b. Remands - these are generally comparable across jurisdictions.

c. Fine Default Admissions - all jurisdictions provided percentages. Ontario also provided type of offence, and Saskatchewan, age, gender, type of offence and sentence length. Alberta provided gender and ethnicity data as well.

d. Bail Supervision - available for B.C. only.

e. Probation - data are available only for Manitoba, B.C. and Ontario but for comparative purposes it was necessary to re-collapse sentence length categories. The Manitoba data are for fiscal year whereas the others are for calendar year.

f. Parole - available for B.C. and Ontario, but Ontario data includes only age, gender, recidivism and sentence length.

3. Data Limitations

a. Age - there is some variation across jurisdictions. B.C., Saskatchewan, and Manitoba age categories are the same but they are different in Ontario and Alberta. This has required some re-classifications with the result that there are now only four categories;

b. Gender - comparable across all jurisdictions;

c. Type of offence - for all jurisdictions except B.C. the data include *Criminal Code*, provincial, federal and municipal offences. There are no provincial and municipal data for B.C. Property, person, drug and federal, provincial and municipal data (where available) are generally comparable. There may be differences in provinces in what is included in federal, provincial and municipal offences, but, overall, the data are comparable.

There is, however, considerable variation in the offences that comprise the Administration and Public Order categories. In Alberta, the two are combined. In the other jurisdictions they are separate but include different offences. For example, weapons and driving offences are included in Public Order offences in Manitoba but not in the other jurisdictions. This means that Public Order offences may appear higher in some jurisdictions than others but the difference is not necessarily real. Administration offences are generally comparable for B.C., Manitoba, Saskatchewan and Ontario, except B.C. includes some other federal offences as well;

d. Sentence Length - there are six groupings of sentence lengths in some provinces and less others. In order to make them comparable across jurisdictions, five new groupings were constructed. However, for within province analyses the groups remain as provided;

e. Days Since Admission - this refers to time actually served from admission to release. These data were requested for Saskatchewan, B.C. and Manitoba;

f. Recidivism - recidivism data were provided by all jurisdictions except Saskatchewan.[1] However, there was variation in categories of recidivism. The variation is as follows:

No previous contact with adult correctional system - B.C. and Manitoba

Previous Jail (no sentence) - Manitoba, Alberta

Previous Jail (Sentence) - Manitoba, B.C.

Prior Adult Custody - Ontario

Prior Adult Probation - Ontario

Prior Youth Probation ard Detention - Ontario

Miscellaneous:

Only two years of recidivism data were available for Manitoba as a new system was implemented. B.C., Saskatchewan, and Alberta provided average number of offences per offender for sentenced admission data; and B.C. provided information on type of custody.

[1] It should be noted that recidivism data generally apply to prior offences or incarceration only in the province providing the data and not to a prior record in another province, territory or country.

APPENDIX II. FIVE PROVINCES DATA TABLES

APPENDIX II

TABLE B.1 ADULT INSTITUTIONS (SENTENCED) AVERAGED (1988-95)

	ABORIGINAL OFFENDERS					NON-ABORIGINAL OFFENDERS				
	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %
AGE CATEGORIES										
Less than 21	16	-	15	15	9	15	-	17	12	7
21-24	14	-	21	24	23	13	-	20	19	22
24-29	23	-	24	23	22	21	-	18	21	22
30 or older	47	-	42	33	47	51	-	46	49	50
GENDER										
Males	90	81	87	90	88	94	91	96	95	92
Females	10	19	13	10	12	6	9	4	5	8
PROPORTION OF ABORIGINAL OFFENDERS										
	17	31	73	57	7	-	-	-	-	-
TYPE OF OFFENSE (ALL OFFENSES)										
Administration	-	**22	12	9	8		**15	6	4	9
Person	-	8	18	27	24	-	7	13	19	22
Property	-	18	24	22	28	-	26	25	26	30
Drugs	-	3	2	1	3	-	7	6	9	9
Driving	-	15	24	-	12	-	-	34	25	1
Public Order	-	-	4	23	2	-	-	2	25	1
Weapons	-	1	2	-	3	-	1	1	-	3
Other Criminal Code	-	2	-	2	-	-	5	-	1	-
Provincial Statues	-	25	12	11	17	-	19	11	11	6
Municipal Statues	-	4	1	-	-	-	4	1	1	-
Other Federal Statues	-	5	2	3	-	-	3	2	3	-

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	ABORIGINAL OFFENDERS					NON-ABORIGINAL OFFENDERS				
	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %
TYPE OF OFFENSE (CRIMINAL CODE OFFENSES ONLY)										
Administration	7	**32-	31	10	10	5	**19-	23	5	10
Person	25	11	11	30	28	22	10	8	22	23
Property	26	26	22	25	33	24	34	28	30	32
Drugs	7	4	2	4	4	9	8	6	11	10
Driving	28	21	23	-	14	32	21	27	-	18
Public Order	5	-	6	26	3	4	-	4	28	1
Weapons	4	2	1	-	3	2	2	2	-	3
Other Criminal Code	-	4	-	2	-	-	3	-	2	-
Other Federal Statutes	-	2	3	3	-	-	3	3	3	-
SENTENCE LENGTHS										
Less than 30 days	58	39	61	40	51	57	37	57	37	47
30-90 days	20	28	21	25	24	22	26	21	28	22
91-180 days	12	15	11	16	13	12	13	11	14	13
181-366 days	6	9	4	15	7	7	9	6	16	8
367 or more days	3	9	3	5	6	3	15	6	6	9
DAYS SINCE ADMISSION										
Less than 15 days	40	-	48	27	-	48	-	52	27	-
16-30 days	17	-	30	17	-	14	-	15	-	-
31-60 days	16	-	11	25	-	13	-	10	25	-
61-180 days	19	-	18	17	-	17	-	15	21	-
181 or more days	9	-	8	13	-	8	-	9	13	-
AVERAGE NUMBER OF OFFENSES PER OFFENDER										
	1.8	1.9	2.7	-	-	1.7	1.5	2.4	-	-
FINE DEFAULTERS										
Sole Reason	19	28	38	19	29	18	23	31	12	15

** In Alberta administration and public order offences are combined into one category.

(Manitoba, British Columbia and Ontario only have provincial offenders for the Sentence Length Category)

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TABLE B.2 ADULT INSTITUTIONS (REMAND) AVERAGED (1988-95)

	ABORIGINAL OFFENDERS					NON-ABORIGINAL OFFENDERS				
	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %
AGE CATEGORIES										
Less than 21	23	-	19	19	12	20	-	22	15	16
21-24	15	-	21	22	25	14	-	17	16	22
24-29	22	-	23	22	22	21	-	17	20	22
30 or older	40	-	37	37	43	46	-	44	49	47
GENDER										
Males	89	81	94	87	88	94	90	99	93	90
Females	11	19	6	13	12	6	10	1	7	10
PROPORTION OF ABORIGINAL OFFENDERS										
	16	29	70	55	6	-	-	-	-	-
TYPE OF OFFENSE (ALL OFFENSES)										
Administration	-	-	44	11	17	-	-	40	13	14
Person	-	-	22	44	35	-	-	17	33	33
Property	-	-	14	19	30	-	-	19	23	32
Drugs	-	-	2	2	3	-	-	5	5	10
Driving	-	-	5	-	3	-	-	5	-	3
Public Order	-	-	10	13	-	-	-	8	16	-
Weapons	-	-	2	-	4	-	-	1	-	5
Other Criminal Code	-	-	-	2	-	-	-	-	1	-
Other Federal Statues	-	-	4	5	-	-	-	6	7	-
Provincial Statues	-	-	-	2	5	-	-	-	2	-
Municipal Statues	-	-	-	-	-	-	-		-	-

	ABORIGINAL OFFENDERS					NON-ABORIGINAL OFFENDERS				
	British Columbia %	Alberta %	Saskatchewan %	Manitoba %	Ontario %	British Columbia %	Alberta** %	Saskatchewan %	Manitoba %	Ontario %
TYPE OF OFFENSE (FEDERAL STATUTES ONLY)										
Administration	3	-	44	14	18	3	-	40	13	14
Person	45	-	22	45	37	40	-	17	34	33
Property	32	-	14	19	32	34	-	19	23	32
Drugs	6	-	2	2	3	9	-	5	5	10
Driving	3	-	5	-	4	4	-	5	-	3
Public Order	5	-	10	13	-	6	-	8	16	-
Weapons	7	-	2	-	4	5	-	1	-	5
Other Criminal Code	-	-	-	2	-	-	-	-	2	-
Other Federal Statutes	-	-	4	5	-	-	-	6	7	-
DAYS SINCE ADMISSION										
Less than 15 days	71	-	73	83	-	73	-	81	86	-
15-30 days	14	-	8	8	-	12	-	5	6	-
30-90 days	9	-	5	8	-	8	-	4	6	-
91-180 days	6	-	11	2	-	6	-	9	1	-
181 or more days	1	-	3	-	-	1	-	3	-	-

**No data were requested from Alberta

Table B.3 Fine Default by Type of Offenses For Ontario and Saskatchewan 1993-1995.

	ETHNICITY			
	ABORIGINAL		NON-ABORIGINAL	
	Saskatchewan	Ontario	Saskatchewan	Ontario
Administration	13	12	7	10
Person	7	22	4	15
Property	16	31	15	29
Drugs	2	6	5	12
Driving	20	24	23	25
Public Order	5	1	3	1
Weapons	-	2	-	2
Provincial	33	1	37	1
Municipal	1	-	3	-
Other	4	1	3	4

Table B.4 ADULT COMMUNITY (PROBATION) AVERAGED (1988-95)

	ABORIGINAL OFFENDERS			NON-ABORIGINAL OFFENDERS		
	British Columbia %	Manitoba %	Ontario %	British Columbia %	Manitoba %	Ontario %
AGE CATEGORIES						
Less than 21	25	15	11	26	16	11
21-24	15	22	23	12	18	23
24-29	20	24	18	17	17	18
30 or older	39	39	49	44	49	49
GENDER						
Males	77	83	79	85	88	82
Females	23	17	21	15	12	18
PROPORTION OF ABORIGINAL OFFENDERS						
	17	45	4	-	-	-
TYPE OF OFFENSE (FEDERAL STATUTES ONLY)						
Administration	3	5	3	2	3	3
Person	33	56	4	30	47	34
Property	33	27	38	32	36	44
Drugs	5	1	2	9	3	5
Driving	10	5	5	9	6	7
Public Order	13	1	1	17	-	2
Weapons	4	4	4	2	3	3
Other	-	1	2	-	1	3
SENTENCE LENGTHS						
Less than 6 months	25	1	13	25	1	11
6 months - 1 year	46	48	46	44	38	46
1 - 2 years	25	47	27	24	52	28
2 or more years	4	4	17	8	9	16

SCHEDULE FEDERAL OFFENSES

SCHEDULE I

(Subsections 107(1), 125(1) and 126(1) and sections 129 and 130)

1. An offence under any of the following provisions of the Criminal Code

(a) paragraph 81(2)(a) (causing injury with intent);

(b) section 85 (use of firearm during commission of offence);

(c) subsection 86(1) (pointing a firearm);

(d) section 144 (prison breach);

(e) section 151 (sexual interference);

(f) section 152 (invitation to sexual touching);

(g) section 153 (sexual exploitation);

(h) section 155 (incest);

(i) section 159 (anal intercourse);

(j) section 160 (bestiality, compelling, in presence of or by child);

(k) section 170 (parent or guardian procuring sexual activity by child);

(l) section 171 (householder permitting sexual activity by or in presence of child);

(m) section 172 (corrupting children);

(n) subsection 212(2) (living off the avails of prostitution by a child;

(o) subsection 212(4) (obtain sexual services of a child);

(p) section 236 (manslaughter);

(q) section 239 (attempt to commit murder);

(r) section 244 (causing bodily harm with intent);

(s) section 246 (overcoming resistance to commission of offence);

(t) section 266 (assault);

(u) section 267 (assault with a weapon or causing bodily harm);

(v) section 268 (aggravated assault);

(w) section 269 (unlawfully causing bodily harm);

(x) section 270 (assaulting a peace officer);

(y) section 271 (sexual assault);

(z) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(z.1) section 273 (aggravated sexual assault);

(z.2) section 279 (kidnapping);

(z.3) section 344 (robbery);

(z.4) section 433 (arson-disregard for human life);

(z.5) section 434.1 (arson-own property);

(z.6) section 436 (arson by negligence); and

(z.7) paragraph 465(1)(a) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990

(a) section 433 (arson);

(b) section 434 (setting fire to other substance); and

(c) section 436 (setting fire by negligence).

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3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983:

(a) section 144 (rape);

(b) section 145 (attempt to commit rape);

(c) section 149 (indecent assault on female);

(d) section 156 (indecent assault on male);

(e) section 245 (common assault); and

(f) section 246 (assault with intent).

SCHEDULE II

(Subsections 107(1) and 125(1) and sections 129, 130 and 132)

1. An offence under any of the following provisions of the *Narcotic Control Act*:

(a) section 4 (trafficking);

(b) section 5 (importing and exporting);

(c) section 6 (cultivation);

(d) section 19.1 (possession of property obtained by certain offences); and

(e) section 19.2 (laundering proceeds of certain offences).

2. An offence under any of the following provisions of the *Food and Drugs Act*:

(a) section 39 (trafficking in controlled drug);

(b) section 44.2 (possession of property obtained by trafficking in controlled drug);

(c) section 44.3 (laundering proceeds of trafficking in controlled drug);

(d) section 48 (trafficking in restricted drug);

(e) section 50.2 (possession of property obtained by trafficking in restricted drug); and

(f) section 50.3 (laundering proceeds of trafficking in restricted drug).

SOURCE: *Community and Conditional Release Act* (1992-11-01)

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APPENDIX III. SURVEY QUESTIONNAIRES

APPENDIX III

QUESTIONNAIRE: CORRECTIONAL PERSONNEL

The federal Ministry of the Solicitor General is collecting information on "best practices" in Aboriginal corrections. The purpose of this exercise is to provide information for policy development in a number of correctional areas. Because of a lack of formal evaluation material, we are seeking information from people with experience in corrections about what they consider the best practices in working with offenders, aboriginal in particular. We would also like to know what you consider the most fruitful directions to follow in future. It would be greatly appreciated if you could complete the following questionnaire as your experience and knowledge are essential to the success of the project. All information is confidential and your name will not be written down. Nothing you write will be attributed to you or your agency. Please be as honest and frank as possible.

We are asking for information in a number of areas. It would be very helpful if you could fill out this document in as much detail as possible. As mentioned above, we are especially interested in what you consider to be the best practices, i.e., what you think works best and might be useful to adopt elsewhere. We would also like to know about any similarities and differences between Aboriginal and non-Aboriginal offenders. Please indicate if your comments refer specifically to female offenders. Thank you for your time and effort in answering this questionnaire.

At which level do you work?

1. federal
2. provincial
3. territorial
4. First Nation/private

What type of service does your institution/agency/unit provide?

How long have you worked in corrections or in fields related to corrections (e.g. addictions)?

What kind of experience do you have in working with Aboriginal offenders or Aboriginal corrections issues?

Have you worked primarily with?

1. Inuit
2. Other Aboriginal
3. All Aboriginal including Inuit
4. Non-Aboriginal
5. All Aboriginal and non-Aboriginal
6. Inuit and non-Aboriginal

Have you worked primarily with?

1. males
2. females
3. both males and females

I. Similarities and Differences Among Offenders

WHAT ARE THE SIMILARITIES (I.E. PERSONAL CHARACTERISTICS, OFFENSES ETC.) BETWEEN ABORIGINAL AND NON-ABORIGINAL OFFENDERS?

- what are the differences?

WHAT DIFFERENCES EXIST AMONG THE ABORIGINAL INMATES THEMSELVES? ARE THESE IMPORTANT TO KNOW FOR PROGRAMMING PURPOSES?

- are there differences in the way the above groups adjust /respond to incarceration?
- to community corrections?
- if yes, please explain differences?

WHAT WOULD BE THE BEST WAY TO IDENTIFY THESE SIMILARITIES AND DIFFERENCES FOR PURPOSES OF TREATMENT/PROGRAMMING?

- is that how it is done now?

2. Assessment and Classification of Inmates

ARE ABORIGINAL OFFENDERS ACCURATELY ASSESSED AT INTAKE REGARDING THEIR PROGRAM OR OTHER NEEDS?

- if no, explain what practice might ensure better assessment?

ARE ABORIGINAL OFFENDERS PROPERLY CLASSIFIED RE: LEVEL OF SECURITY REQUIRED?

- if no, why is this and how can it be improved?

ARE ABORIGINAL OFFENDERS IN FOR LESS SERIOUS OFFENSES THAN NON-ABORIGINAL OFFENDERS?

- if yes, explain.

3. Programs, Services and Needs

(a) Institutional:

IN YOUR OPINION, WHAT ARE THE GREATEST PROBLEMS FACING ALL OFFENDERS, FOR EXAMPLE, PERSONAL, SOCIAL, EDUCATIONAL ETC. ? PLEASE DESCRIBE IN DETAIL

- Aboriginal offenders?

HOW GOOD IS THE "FIT" BETWEEN THE PROGRAMS/SERVICES AVAILABLE AND INDIVIDUAL NEEDS FOR BOTH GROUPS?

WHICH INSTITUTIONAL PROGRAMS/SERVICES ARE MOST USEFUL FOR ABORIGINAL OFFENDERS?

- for non-Aboriginal offenders?

ARE THERE DIFFERENCES IN THE WAY THESE VARIOUS GROUPS USE INSTITUTIONAL PROGRAMS/SERVICES?

If yes, explain

DO YOU THINK SERVICES SHOULD BE DELIVERED DIFFERENTLY TO ABORIGINAL AND NON-ABORIGINAL OFFENDERS?

- if yes, explain

IF YOU WERE RESPONSIBLE FOR INSTITUTIONAL PROGRAMMING, WHAT WOULD YOU CHANGE FOR BOTH GROUPS?

- for Aboriginal offenders/

IN YOUR EXPERIENCE, DO PROGRAMS WHICH FOCUS ON CULTURE, SPIRITUALITY AND ABORIGINAL TRADITIONAL VALUES CHANGE THE BEHAVIOR/LIFE-STYLE OF THE ABORIGINAL OFFENDERS WHO PARTICIPATE IN THEM?

DO RELIGIOUS OR CULTURAL PROGRAMS CHANGE THE BEHAVIOR/LIFE STYLE OF NON-ABORIGINAL OFFENDERS?

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ARE THERE MAINSTREAM PROGRAMS WHICH MIGHT BE USEFUL FOR ABORIGINAL OFFENDERS BUT WHICH THEY DO NOT USE?

- if yes, why are they not used

-if no, why are they not useful?

ARE THERE ABORIGINAL PROGRAMS WHICH MIGHT BE USEFUL FOR NON-ABORIGINAL OFFENDERS?

- if yes, why are they not used?

- if no, why are they not useful?

WOULD YOU SAY THAT, IN GENERAL, ABORIGINAL PROGRAMS/SERVICES ARE STAFFED WITH INDIVIDUALS WITH ADEQUATE TRAINING, KNOWLEDGE AND/OR SKILLS?

- non-Aboriginal programs and services?

WHAT WOULD YOU SAY ARE THE THREE MOST VALUABLE CORRECTIONAL PROGRAMS OR SERVICES FOR ABORIGINAL OFFENDERS WHICH YOU ARE AWARE OF?

WHAT ARE THE MAJOR GAPS IN PROGRAMS AND SERVICES FOR ABORIGINAL OFFENDERS?

IF YOU HAD THE AUTHORITY TO IMPLEMENT THE BEST PROGRAM FOR ABORIGINAL OFFENDERS IN INSTITUTIONS WHAT WOULD IT BE AND WHO WOULD RUN IT?

b) Release and Post - Release

DO ABORIGINAL OFFENDERS GET EARLY RELEASE AT THE SAME RATE AS NON-ABORIGINAL OFFENDERS?

- if no, why is there a difference?

DO CERTAIN INDIVIDUALS OR GROUPS HAVE THE MOST PROBLEM GETTING RELEASED BEFORE END OF SENTENCE?

- if yes, why?

HAS THIS CHANGED IN THE PAST 5 YEARS?

- if yes, how?

- if no, what would improve this?

IN YOUR OPINION ARE THERE DIFFERENCES IN THE ABILITY TO FORMULATE RELEASE PLANS FOR ABORIGINAL AND NON-ABORIGINAL OFFENDERS?

WHAT WOULD YOU CHANGE ABOUT PLANNING FOR THE RELEASE OF ABORIGINAL OFFENDERS?

WHAT IS THE MOST USEFUL PRE-RELEASE PROGRAM FOR ABORIGINAL INMATES?

- why do you think it useful?

WHAT ACCOUNTS FOR A SUCCESSFUL RELEASE?

ARE AFTERCARE ADJUSTMENTS DIFFERENT FOR ABORIGINAL AND NON-ABORIGINAL OFFENDERS?

- if yes, why?

FOR DIFFERENT GROUPS OF ABORIGINAL OFFENDERS?

-if yes, why?

WHO IS LESS LIKELY TO RE-OFFEND?

- why?

WHICH INSTITUTIONAL FACTORS/PROGRAMS DO YOU THINK REDUCE RE-OFFENDING

WHICH COMMUNITY FACTORS/RESOURCES DO YOU THINK REDUCE RECIDIVISM?

ARE ABORIGINAL OFFENDERS USUALLY ABLE TO CONTINUE WITH CULTURAL/SPIRITUAL PROGRAMS ON THE OUTSIDE?

IN GENERAL, DO YOU FEEL THAT AS A RESULT OF PROGRAMS/SERVICES OR TREATMENT WHILE IN CORRECTIONAL INSTITUTIONS, THAT ABORIGINAL OFFENDERS POSE LESS, MORE, OR THE SAME RISK TO SOCIETY WHEN RELEASED?

- if more or the same, which programs do you feel are least useful for reducing risk?

4. Correctional Options/Alternatives

IN YOUR OPINION, ARE THERE BETTER CORRECTIONAL OPTIONS FOR ABORIGINAL OFFENDERS THAN SPENDING TIME IN A CORRECTIONAL INSTITUTION?

ARE THERE PARTICULAR ALTERNATIVES TO INCARCERATION YOU FEEL MIGHT BE BETTER?

SHOULD THESE ALTERNATIVE BE AVAILABLE TO ALL OR ONLY SOME ABORIGINAL OFFENDERS?

- to all or only some non-Aboriginal offenders?

5. Reintegration

IN YOUR OPINION AND EXPERIENCE, WHAT IS THE BEST WAY FOR ABORIGINAL OFFENDERS TO ACHIEVE REINTEGRATION WITHIN THEIR COMMUNITIES?

- within their families?

ARE THESE THE SAME FOR NON-ABORIGINAL OFFENDERS?

WHAT DO COMMUNITIES NEED TO KNOW OR DO TO IMPROVE THE REINTEGRATION OF OFFENDERS?

- what do families need to know or do to improve it?

WHAT RESOURCES SHOULD COMMUNITIES HAVE TO ASSIST/STIMULATE THE REINTEGRATION PROCESS?

6. In Conclusion

IN GENERAL AND IN RELATION TO YOUR CORRECTIONAL EXPERIENCE WITH ABORIGINAL AND NON-ABORIGINAL OFFENDERS, CAN YOU DESCRIBE WHAT YOU BELIEVE ARE THE MOST VALUABLE LESSONS LEARNED OVER THE YEARS?

- for both groups ?

- for Aboriginal offenders only?

DO YOU KNOW OF ANY USEFUL WRITTEN MATERIAL WHICH MAY NOT HAVE COME TO OUR ATTENTION?

WHAT MORE COULD CORRECTIONS DO TO ATTRACT AND KEEP HIGH-QUALITY ABORIGINAL STAFF?

QUESTIONNAIRE

(FOR FEDERAL/PROVINCIAL ABORIGINAL OFFENDERS)

The Ministry of the Solicitor General Canada is collecting some information about the needs of Aboriginal offenders and what they think about programs in prisons and about release. We would be very grateful if you could fill out this questionnaire. It should only take you about 20 minutes. We hope that by collecting this information we will be able to provide better services to you and to other Aboriginal offenders. We are giving you a stamped, self-addressed envelope to return the questionnaire to us. Please do not write your name on the questionnaire. Please put the questionnaire in the envelope, seal it and return it to the official who gave it to you. Many thanks for your help.

PERSONAL BIOGRAPHY

1. Age _____

2. Sex M____ F____

3. Aboriginal Identity

Status Indian ____
Non-Status ____
Metis ____
Inuit ____

4. Last Grade Completed

Less than Grade 9 _____
Some high school _____
High school completion _____
High School + _____

5. Where Are You From?

Aboriginal community _____
Non-aboriginal community _____

6. Where Did You Spend Most of Your Life?

Mainly aboriginal community (including reserve) _____
Mainly rural community _____
Mainly small town _____
Mainly city _____
Combination _____

7. Number of Times in Prison

First time ____
1-2 previous times ____
3 or more times ____

8. First Time Incarcerated Was in a

Federal institution ____
Provincial institution ____
Youth facility ____

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9. Previous Sentence(s) Were Mainly Served in a

Federal institution ____
Provincial institution ____
Youth Facility ____

10. Please Identify Which Need(s) You Have (Place an (X) on the appropriate lines)

education ____
employment skills ____
reading ____
cultural ____
spiritual ____
life skills ____
alcohol problem ____
family problems ____
other (describe) _____

10a. What Do You Consider Your Greatest Need? _____

CLASSIFICATION AND ASSESSMENT

11. Have You Been Assessed

Yes ____ No ____

12. What Were the Needs Identified in Your Assessment (Please List)

_____
_____
_____
_____

13. Do you Agree With Your Assessment

Yes ____ No ____

14. Please Indicate to What Extent You Agree With the Following Statements in Relation to Your Security Classification and Assessment(s): (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) I feel I have been properly classified for security level	1	2	3	4	5
b) I feel my needs have been properly dealt with	1	2	3	4	5

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15. Do You Think These Needs Have Been Identified By the People Who Deal With You, For Example

	Yes	No	Partly
Your Classification Officer	___	___	___
Native Liaison Worker	___	___	___
Others (Please List)			
_____	___	___	___
_____	___	___	___
_____	___	___	___

PROGRAMS

16. Please Indicate How Much You Participate in the Following Programs While in this Institution: (Place an (X) in the Appropriate Blank)

	A lot	Sometimes	Rarely	Never
a) cultural/spiritual	___	___	___	___
b) educational	___	___	___	___
c) life skills	___	___	___	___
d) job placement	___	___	___	___
e) literacy	___	___	___	___
f) group counselling	___	___	___	___
g) individual counselling	___	___	___	___
h) sweat lodges	___	___	___	___
i) alcohol and drug programs	___	___	___	___
j) other programs designed for aboriginal inmates	___	___	___	___
k) other programs designed for everybody	___	___	___	___

17. Please Indicate the Extent to Which You Agree With the Following Statements: (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) I am only interested in participating in a program if it is especially for aboriginal inmates	1	2	3	4	5
b) Any program is useful if it meets my needs	1	2	3	4	5
c) I was discouraged by program staff from participating in programs that were not designed for aboriginal inmates	1	2	3	4	5
d) I did not want to participate in programs because I felt shy	1	2	3	4	5
e) I felt left out of programs	1	2	3	4	5
f) Non-aboriginal inmates can benefit from programs designed for aboriginal inmates	1	2	3	4	5

g) Aboriginal inmates can benefit from general programs	1	2	3	4	5
h) The programs you participate in should depend on what you need and not on whether you are aboriginal	1	2	3	4	5
i) I think the institution offers all the programs I really need	1	2	3	4	5
j) I think the institution needs a lot more programs for all inmates	1	2	3	4	5

PROGRAM STAFF

18. There are Aboriginal Persons that Come From Outside this Institution to Deliver Aboriginal Programs:

Yes_____ No_____

19. There are Aboriginal Staff in this Institution that Deliver Aboriginal Programs:

Yes_____ No_____

20. Please Indicate the Extent to Which you Agree with the Following Statements About The Institutions Staff: (Circle the Appropriate Number)

	Strongly Agree	**Agree**	**No Opinion**	**Disagree**	**Strongly Disagree**
a) The aboriginal staff generally understand the needs of aboriginal inmates.	1	2	3	4	5
b) The aboriginal staff generally are well selected for their jobs	1	2	3	4	5
c) The aboriginal staff generally are well trained for their jobs	1	2	3	4	5
d) The non-aboriginal staff involved in programs are generally well selected and trained	1	2	3	4	5
e) The non-aboriginal staff who are involved in programs generally understand the needs of aboriginal inmates	1	2	3	4	5

21. Did You Participate in any Programs to Assist You With Your Release:

Yes ____ No ____

If yes, what were the programs? (List) _____

_____

_____

Did you complete them? Yes ____ No ____ Some only ____

RELEASE

22. Please Indicate the Extent to Which You Agree with the Following Statements: (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) aboriginal inmates have more problems than non-aboriginal inmates getting full parole	1	2	3	4	5
b) aboriginal inmates have more problems getting into community training programs	1	2	3	4	5
c) aboriginal inmates need more programs to help them get released	1	2	3	4	5
d) there are enough programs for aboriginal inmates once they are released	1	2	3	4	5
e) After release aboriginal programs are more useful in meeting the needs of aboriginal inmates than general ones.	1	2	3	4	5

ABORIGINAL AND NON-ABORIGINAL INMATES

23. Please Indicate the Extent to Which You Agree with the Following Statements: (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) aboriginal and non-aboriginal inmates have the same employment and education needs.	1	2	3	4	5
b) aboriginal and non-aboriginal inmates have the same personal /family/background problems.	1	2	3	4	5
c) aboriginal and non-aboriginal inmates should be treated the same when in the institution.	1	2	3	4	5

d) the only differences between aboriginal and non-aboriginal inmates are cultural ones	1	2	3	4	5
e) generally staff treat aboriginal and non-aboriginal inmates the same.	1	2	3	4	5

WHILE IN THE INSTITUTION

24. What is the Extent to Which You Would Agree to the Following Statements About Being in the Institution? (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) my family is supportive when I am in the institution	1	2	3	4	5
b) my family visits me often when I am in the institution	1	2	3	4	5
c) my home community supports me when I am in the institution.	1	2	3	4	5
d) I have learned a lot about myself and my problems in the institution	1	2	3	4	5
e) I have received useful treatment in the institution	1	2	3	4	5

Answer the Questions Below Only If You Have Been in Prison Before And Released.

GOING BACK INTO THE COMMUNITY

25. What is the Extent to Which You Would Agree to the Following Statements About Going Back to the Community ? (Circle the Appropriate Number)

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a) when I left the institution I felt prepared to deal with society.	1	2	3	4	5
b) After my release I was able to carry on with aboriginal cultural/spiritual programs/ practices I was involved with in the institution	1	2	3	4	5
c) my family welcomed me home	1	2	3	4	5
d) my community welcomed me home	1	2	3	4	5

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e) there were enough services to help me in my home community	1	2	3	4	5
f) people in my family understood my problems	1	2	3	4	5
g) people in my home community understood my problems	1	2	3	4	5
h) I felt like I was accepted/ belonged in my home community	1	2	3	4	5
i) I had no home community to return to	1	2	3	4	5

QUESTIONNAIRE: COMMUNITIES

Aboriginal Corrections, Ministry of the Solicitor General, is collecting information about the most promising approaches in relation to Aboriginal offenders in correctional settings. An area of great importance is the reintegration of offenders back into their families and communities. Given your experience, we would like to ask you some questions about offenders who have been released to or placed in the care of their community in order to understand what you consider the best reintegration practices from the perspective of communities and families. All information is confidential. Thank you very much for your time and effort.

What is the geographic location of your community?

1. remote/isolated/rural
2. rural
3. semi-urban
4. urban

What is the population of your community?

1. less than 500
2. 500-1000
3. 1000-3000
4. 3000-6000
5. more than 6000

1. In general, what do you see as the greatest needs of Aboriginal offenders who are released from correctional institutions or community residential centres?

2. Are the needs the same for males and females? If no, what are the differences?

3. Do needs vary by age groups? if yes, how?

4. How well are these needs understood by communities? by families?

5. In general, how do communities respond to offenders who want to return to communities? How do families respond?

6. Are the community responses different according to type of offence committed? According to institution where served, for example, provincial or federal?

7. Are families stigmatized or ostracized when the offender is in correctional institution? When the offender returns to community?

If yes or depends, explain.

If no, explain why not.

8. In your opinion, what information is required by communities to make them more aware of the needs and realities of released offenders?

9. Is there anything in place to educate communities about needs and realities of offenders? If not, what is the best way to educate communities?

10. Who needs to be educated?

11. Do you believe Aboriginal offenders are adequately prepared for reintegration into families and communities upon release? If no, what preparation is required? Who should be providing it?

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12. In your opinion and from what you have observed, what is the best way for communities to assist offenders in the reintegration process? For families to assist? For families and communities to work together?

13. What community resources/services do you feel are required by Aboriginal offenders to promote and support the reintegration process?

14. Are these presently available in your community?

15. What level of training, knowledge and experience should be required for people delivering these services? Do the existing resources employ such people?

16. What else could be done to encourage communities and families to accept offenders back, and give them the support and help they need?

17. Finally, what other factors are important to community "correctional" care of Aboriginal offenders?